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1 INDEX

2 **EVATT TAMINE**

3	Cross by Mr. Varnado	5
	ReDirect by Mr. Langston	28
4	ReCross by Mr. Varnado	53

5
6 **THOMAS WISNIEWSKI, M.D.**

	Direct by Mr. Loonam	55
7	Cross by Mr. Magnani	90
	ReDirect by Mr. Loonam	161

8

9

10

11

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13

14

15

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EVATT TAMINE - CROSS BY MR. VARNADO

P R O C E E D I N G S

NOVEMBER 17, 2021

(1:06 p.m. to 5:10 p.m.)

01:06:12

THE CASE MANAGER: All rise.

THE COURT: Please be seated, everyone.

Okay. Counsel, you may proceed.

MR. VARNADO: Thank you, Your Honor.

CROSS-EXAMINATION (CONTINUED)

01:06:40

BY MR. VARNADO:

Q. Good afternoon, Mr. Tamine.

A. Good afternoon.

Q. When you were testifying on direct examination,
Mr. Langston asked you some questions about some
properties in Colorado.

01:06:47

A. Yes.

Q. Do you recall that line of questioning?

A. I do.

Q. And one of those properties is something called the
Mountain Queen, which is a house and parcel of land in the
Aspen area. Correct?

01:06:54

A. Yes.

Q. And another is the Frying Pan Ranch, a fishing
property I think you described, which is in the Basalt,
Colorado, area. Correct?

01:07:05

EVATT TAMINE - CROSS BY MR. VARNADO

1 **A.** That's correct.

2 **Q.** And I'm correct that an entity named Regency owns
3 those properties in Colorado?

4 **A.** That is correct.

01:07:13

5 **Q.** And you are the director of the trust company that
6 serves as the trustee for the entity that owns Regency; is
7 that fair?

8 **A.** Yes.

01:07:23

9 **Q.** Okay. Now, the companies within Regency that own
10 these properties in Colorado are U.S. companies. Correct?

11 **A.** That's right.

12 **Q.** All right. And the Mountain Queen is owned by
13 Mountain Queen, Inc., a Colorado company?

14 **A.** That's correct.

01:07:33

15 **Q.** All right. And the other Colorado properties are
16 owned by Hinkey Property, LLC, which is owned by Hinkey
17 Holdings, both of which are Colorado companies?

18 **A.** Yes.

01:07:44

19 **Q.** All right. And, as U.S. companies, these entities
20 are known and have exposure to the Internal Revenue
21 Service?

22 **A.** That's correct.

23 **Q.** Now, at one point after you assumed role of trustee
24 for the AEBCT, Mr. Brockman was paying rent on a per-usage
25 basis for the Mountain Queen. Correct?

01:07:58

EVATT TAMINE - CROSS BY MR. VARNADO

1 **A.** That's correct.

2 **Q.** All right. And, as trustee for the AEBCT, you told
3 Mr. Brockman that he actually needed to pay rent on these
4 properties year-round instead of on a per-use basis
01:08:10 5 because no one else was using those properties. Correct?

6 **A.** One part of that is incorrect. You said trustee, the
7 AEBCT. That has nothing to do with those properties.
8 That trust has no part in the ownership of those -- of
9 those properties.

01:08:24 10 **Q.** Thank you for that clarification. That was a
11 misstatement on my part. I appreciate that.

12 So, for the trust entity that does own
13 those properties, in any -- which is not the AEBCT, as we
14 just established.

01:08:38 15 **A.** That's correct.

16 **Q.** But you had informed Mr. Brockman that it would be
17 appropriate for him to pay year-round rent on that
18 property, the Mountain Queen, instead of just on a per-use
19 basis. Correct?

01:08:48 20 **A.** That's correct.

21 **Q.** All right. And he agreed to this requirement?

22 **A.** Yes.

23 **Q.** And the rent is based on a fair market value?

24 **A.** Yes. Assessed -- we re-assess it every year.

01:09:01 25 **Q.** That was my next question --

EVATT TAMINE - CROSS BY MR. VARNADO

1 **A.** Sorry.

2 **Q.** -- that is it assessed on a regular basis. No.
3 That's fine.

01:09:08

4 And that was consistent with your
5 obligations as a fiduciary of that separate entity to get
6 the year-round rent on that property?

7 **A.** Yes.

8 **Q.** And Mr. Brockman agreed to that?

9 **A.** Yes.

01:09:16

10 **Q.** All right. And he didn't challenge your decision
11 requiring him to pay rent year-round?

12 **A.** No, he accepted it willingly.

13 **Q.** And, so, neither Mr. Brockman or any of his family
14 members are beneficiaries of the trusts that indirectly
15 own those properties in Colorado?

01:09:29

16 **A.** That's correct.

17 **Q.** Now, as I understand it, you also told Mr. Brockman
18 that those Colorado properties should be donated to the
19 State of Colorado after he passes away.

01:09:39

20 **A.** That was one of my ideas, yes.

21 **Q.** And did he object to that?

22 **A.** No. He -- I recall him saying he thought it was a
23 very good idea.

01:09:48

24 **Q.** And donating land to the State of Colorado would be
25 consistent with charitable purposes of a trust structure?

EVATT TAMINE - CROSS BY MR. VARNADO

1 **A.** That's correct.

2 **Q.** Now, and you also got some question from Mr. Langston
3 about a boat that's held outside of the AEBCT Trust
4 structure in a similar manner to the Colorado properties.
5 Correct?

01:10:03

6 **A.** Slightly different. The boat is partially owned by
7 Mr. Brockman, or was partially owned by Mr. Brockman. He
8 no longer has an interest in the boat.

9 **Q.** And neither Mr. Brockman or any of his family members
10 are beneficiaries of the trusts that indirectly own that
11 boat. Correct?

01:10:12

12 **A.** That's correct.

13 **Q.** And, again, that particular vessel was actually
14 established for marine research and is outfitted for some
15 amount of -- of research connected with marine life on the
16 now called "ALBULA"?

01:10:25

17 **A.** Yes.

18 **Q.** All right. Okay. At some point -- I want to switch
19 gears just a little bit and talk about again some of the
20 questions Mr. Langston asked you related to, you know,
21 oversight of the trusts and regulators.

01:10:39

22 At a certain point in time, it's true that
23 you moved several entities that were under a different
24 jurisdiction in Belize and brought them back to Bermuda.

01:10:53

25 Is that correct?

EVATT TAMINE - CROSS BY MR. VARNADO

1 **A.** I -- there were entities in Belize that were moved or
2 killed off and then -- plus, I can't recall exactly which
3 ones.

01:11:09

4 **Q.** Okay. And I want to just focus, I guess, on the
5 notion of Belize versus Bermuda.

6 Is it fair to say that Belize is sort of
7 known a little more for lower regulation and nonexistent
8 KYC requirements?

9 **A.** That's absolutely correct.

01:11:20

10 **Q.** And you view Bermuda as actually having stronger
11 regulations?

12 **A.** That's right.

13 **Q.** And, in your view, that was a positive thing, to be
14 in a more regulated environment in Bermuda?

01:11:31

15 **A.** Yes.

16 **Q.** All right. And did Mr. Brockman oppose in any way
17 your recommendation or decision to restructure entities
18 under Bermuda law?

19 **A.** No.

01:11:41

20 **Q.** He didn't argue that a jurisdiction with lower
21 regulation or less KYC requirements would be a better
22 place for trust entities?

23 **A.** He did not.

01:11:56

24 **Q.** Now, Mr. Tamine, you are in fact a lawyer yourself.
25 Correct?

EVATT TAMINE - CROSS BY MR. VARNADO

1 A. Yes.

2 Q. But, in addition -- well, set aside your legal
3 status -- or your status as an attorney. Mr. Brockman
4 sought legal advice from numerous attorneys over the years
5 in connection with the trusts and related entities; is
6 that fair?

7 A. Yes.

8 Q. And -- and you may have very well been part of some
9 of those conversations but not all of them; is that fair?

10 A. That is fair.

11 Q. And this would include Carlos Kepke, as we heard
12 about today, who was formally at Chamberlain Hrdlicka.
13 Correct?

14 A. I believe so, yes.

15 Q. You mean you believe he was at Chamberlain Hrdlicka?

16 A. Yes.

17 Q. But he was, in fact, one of the counsel to the
18 trusts?

19 A. Not so much in the time I was involved. He had very
20 little involvement in my time, but, yes, he --
21 historically, he was, and there were little bits and
22 pieces after I got involved in 2004.

23 Q. Okay. And you were asked some questions about
24 looking at Mr. Smith's documents that were either at the
25 home office or regular office of Mr. Kepke. Do you

EVATT TAMINE - CROSS BY MR. VARNADO

1 remember those questions from Mr. Langston?

2 **A.** Yes.

3 **Q.** And did you have Mr. Smith's consent to look at those
4 records?

01:12:59

5 **A.** I did.

6 **Q.** Okay. Some other attorneys from which legal advice
7 were sought in connection with the AEBCT include Stephen
8 Vetter of Kozusko Harris Duncan? Do you recall Mr.
9 Vetter?

01:13:24

10 **A.** That's correct.

11 **Q.** Brandon Van Dyke and Lou Kling of Skadden Arps?

12 **A.** Yes.

13 **Q.** Rufus Cormier of Baker Botts?

14 **A.** Yes.

01:13:38

15 **Q.** Ernest Morrison of Cox Hallett?

16 **A.** I don't recall so much Ernest Morrison, but I'm sure
17 he did at some point before my time.

18 **Q.** Okay. But the Cox Hallett firm where you were once a
19 lawyer as well --

01:13:50

20 **A.** Yes.

21 **Q.** -- provided advice?

22 Simon Benedek of the Benedek Lewin law
23 firm? Do you recall Mr. Benedek?

24 **A.** Yes, I think he did have -- he did do some work.

01:13:59

25 **Q.** And just a couple others. Sherry Kaplan at Greenberg

EVATT TAMINE - CROSS BY MR. VARNADO

1 Traurig?

2 **A.** Yes.

3 **Q.** James Reed of Baker Botts?

4 **A.** Not with the Brockman trust, the AEBCT. I don't
01:14:10 5 recall Mr. Reed doing anything in relation to the trust.
6 I could be wrong about that, though.

7 **Q.** With respect to the Colorado properties. Would that
8 refresh your memory?

9 **A.** With the Colorado properties, yes.

01:14:20 10 **Q.** Okay. And then Carol Tello of Sutherland Asbill? Do
11 you recall?

12 **A.** Yes, I do recall. Yes.

13 **Q.** All right. So, I want to turn to the time period of
14 August 2018 when Mr. Kepke's house was searched here in
01:14:32 15 Houston pursuant to a search warrant. Are we clear on
16 that time period?

17 **A.** Yes.

18 **Q.** Now, after Mr. Kepke's home was searched, he actually
19 reached out to you. Correct?

01:14:41 20 **A.** That's right.

21 **Q.** And he told you that there had been federal agents
22 there who had mentioned your name and Mr. Brockman's name.
23 Correct?

24 **A.** Yes.

01:14:47 25 **Q.** And following this conversation you called

EVATT TAMINE - CROSS BY MR. VARNADO

1 Mr. Brockman to tell him what you had learned?

2 **A.** Yes.

3 **Q.** All right. And you discussed with Mr. Brockman the
4 fact that this search had occurred and there was obviously
5 some kind of investigation?

01:14:57

6 **A.** Yes.

7 **Q.** All right. Now, after learning that your names had
8 been mentioned in connection with the Kepke search, did
9 Mr. Brockman begin a conversation with you about how to
10 cover something up?

01:15:08

11 **A.** No.

12 **Q.** Did he instruct you to destroy any records?

13 **A.** No.

14 **Q.** Did he tell you that, to the extent any investigation
15 ensued of him, he would develop a ruse and pretend to have
16 competency issues?

01:15:19

17 **A.** No.

18 **Q.** Did he talk with you about destroying any computer
19 hard drives?

01:15:30

20 **A.** No.

21 **Q.** All right. Did he tell you, 'Empty your house and
22 get everything out. You might be searched next'?

23 **A.** No.

24 **Q.** All right. Mr. Langston asked you questions. I
25 think he, in a leading way, said that 'Had you ever seen

01:15:38

EVATT TAMINE - CROSS BY MR. VARNADO

1 him as shaken after that search?' Do you remember that
2 question?

3 **A.** Yes.

4 **Q.** You actually didn't see Mr. Brockman --

01:15:46

5 **A.** No.

6 **Q.** -- after the Kepke search, did you?

7 **A.** No, I didn't.

8 **Q.** Okay. I want to shift gears a little bit and talk
9 about some of the questions about some of these products

01:15:57

10 like PGP, Evidence Eliminator and the like. I'm just
11 going to direct your attention there.

12 **A.** Yes.

13 **Q.** Mr. Brockman is a very private person. Is that fair
14 to say?

01:16:07

15 **A.** Yes.

16 **Q.** And he doesn't like drawing attention to himself?

17 **A.** That's correct.

18 **Q.** And he really doesn't like people knowing his
19 personal business?

01:16:14

20 **A.** That's correct.

21 **Q.** Would you say it's fair to say that he took measures
22 to ensure his privacy?

23 **A.** Yes.

24 **Q.** Such as ensuring -- using secure forms of

01:16:22

25 communication?

EVATT TAMINE - CROSS BY MR. VARNADO

1 A. Yes.

2 Q. And I think Mr. Langston showed you some e-mails from
3 an encrypted server. Do you recall those?

4 A. Yes.

01:16:30

5 Q. Would you agree with me that a lot of people use
6 encrypted forms of communication?

7 A. Yes.

8 Q. It's not uncommon?

9 A. Not at all.

01:16:37

10 Q. And these are things that are commercially available?

11 A. Yes.

12 Q. And, in fact, I think we saw some e-mails where you
13 identified that the name "Permit" in the -- in the name of
14 the e-mail address and "Red Fish" -- "Permit" was

01:16:51

15 Mr. Brockman, you were "Red Fish," but in the text of the
16 documents themselves it said "Dear Evatt" and signed by
17 "Bob." Right?

18 A. Yes.

19 Q. You were using your real names --

01:16:59

20 A. Yes.

21 Q. -- in the e-mails?

22 Okay. And so you -- you were asked some
23 questions about PGP, called "Pretty Good Privacy." Do you
24 recall those questions?

01:17:08

25 A. Yes.

EVATT TAMINE - CROSS BY MR. VARNADO

1 Q. That is a commercially available piece of software?

2 A. Yes.

3 Q. All right. Evidence Eliminator. Do you recall that
4 question?

01:17:15

5 A. Yes.

6 Q. And I believe you testified that it's not only good
7 for sort of hygiene of the computer, but to help it run
8 better. There's multiple purposes for that product.

9 A. I believe so.

01:17:25

10 Q. And, again, something that's commercially available?

11 A. I think you could buy it at Best Buy at one point.

12 Q. You could get it on Amazon. You don't have to go to
13 the dark web --

14 A. No.

01:17:33

15 Q. -- or something to get these products?

16 A. Not at all.

17 Q. You were asked some questions about communicating by
18 Silent Phone, which I think you addressed is kind of akin
19 to the voice version of Snapchat or something like that.

01:17:45

20 A. Voice version of --

21 Q. WhatsApp.

22 A. -- WhatsApp or Signal.

23 Q. Okay. Right. And, again, commercially available
24 product. Nothing -- something that you have used in --

01:17:52

25 during your time working with Mr. Brockman and known of

EVATT TAMINE - CROSS BY MR. VARNADO

1 other people to use?

2 **A.** Yes.

3 **Q.** Okay. All right. So, I want to -- I think you made
4 some statements both to the Grand Jury and in your
5 meetings with the government. It's fair to say that
6 Mr. Brockman has some level of distrust with certain
7 agencies within the federal government?

8 **A.** That's correct.

9 **Q.** And in particular the IRS?

10 **A.** Yes.

11 **Q.** And I think you said that, in your view, Mr. Brockman
12 viewed the IRS as part of the deep state?

13 **A.** I'm not sure about the phrase "deep state." He -- he
14 viewed them with distrust. He didn't believe that the IRS
15 is an organization that behaved properly, or at times,
16 lawfully.

17 **Q.** And, in fact, believed that the IRS may seek to
18 inappropriately assess income tax that he, in his mind,
19 believed did not owe income tax on?

20 **A.** That's correct.

21 **Q.** All right. And I guess the fact that Mr. Brockman
22 has a distrust of the IRS is not, in and of itself, a
23 crime itself.

24 **A.** No, not that I'm aware of.

25 **Q.** And do you have an understanding that Mr. Brockman 's

EVATT TAMINE - CROSS BY MR. VARNADO

1 distrust of the IRS may have stemmed from an audit
2 experience that Mr. Brockman had in the 1990s?

01:19:03

3 **A.** I believe it's stemmed -- well, in my experience, in
4 discussions with him, from two things: certainly an audit
5 experience in the 1990s, and the experience of someone he
6 worked with at Reynolds and Reynolds who had a bad
7 experience with them.

8 **Q.** In an audit of their affairs?

9 **A.** I believe it was in an audit of their affairs, yes.

01:19:15

10 **Q.** And, in fact, your first introduction to Mr. Brockman
11 stems from that audit that I referenced from the 1990s.
12 Is that fair?

13 **A.** That's correct. Yes.

01:19:25

14 **Q.** And that's when you were a lawyer working for Cox
15 Hallett when you first learned of or met Mr. Brockman in
16 around 1999 or 2000?

17 **A.** Yes.

01:19:36

18 **Q.** All right. And part of your duties for the law firm
19 at that time: You helped respond to requests for
20 information concerning the AEBCT as a result of that audit
21 that was going on back in the '90s?

22 **A.** Yes. It was an information request from the IRS.

23 **Q.** And part of your job was to respond with information
24 that should be turned over as a result of that inquiry?

01:19:51

25 **A.** Yes.

EVATT TAMINE - CROSS BY MR. VARNADO

1 Q. All right. And one of the documents you said that
2 should be turned over to the IRS was the trust indenture
3 document setting up the AEBCT?

4 A. That's correct.

01:20:00

5 Q. And in connection with this audit, then, the IRS
6 gained visibility into the structure of the AEBCT at that
7 time?

8 A. Yes.

01:20:12

9 Q. So, you were asked some questions about some
10 donations and some questions about Baylor University and
11 Baylor Medical College, and want to be just very clear on
12 the timing of some of those discussions. All right?
13 Because I think you were shown a document -- a particular
14 government exhibit that had a 2015 date on it and then we
01:20:28 15 jumped back in time to the establishment of the actual
16 25-million-dollar donation. So, I just want to orient you
17 in time. Okay?

18 So, I am showing you what's been marked as
19 Government's Exhibit 16 -- I am just going to put it on
01:20:39 20 the ELMO here -- and it's dated June 5th of 2011. And can
21 you see it on -- I am not going to ask you a lot of
22 questions. You don't need to be looking at the binder if
23 you can read it --

24 A. Just my eyesight is not great; so, I'll get up close.

01:20:57

25 Q. As long as you can see it.

EVATT TAMINE - CROSS BY MR. VARNADO

1 **A.** Yes.

2 **Q.** So, I just want to be very clear that it was in 2011
3 when this communication is sent to Baylor University and
4 the Baylor College of Medicine that set forth the terms of
5 the 25-million-dollar donation that you were asked about
6 on direct examination.

01:21:13

7 **A.** Yes.

8 **Q.** And this precedes Mr. Smith's divorce. Correct?

9 **A.** Yes.

01:21:23

10 **Q.** Any inclination that somebody might be under
11 investigation, Mr. Smith or otherwise?

12 **A.** Absolutely. Yes.

13 **Q.** All right. And, again, this is to an institution in
14 Houston that is well regarded?

01:21:34

15 **A.** Yes.

16 **Q.** All right. And, again, this letter that you already
17 looked through contains the purposes of the donation as of
18 2011, and there are several and I -- I'll just kind of
19 walk through here.

01:21:47

20 But you see that the first purpose is a
21 5-million-dollar endowment to support the particular chair
22 of neuropsychiatry that's held by the Yudnofskys?

23 **A.** Yes.

24 **Q.** And then in Part B there is a 3-million-dollar

01:22:00

25 endowment to get a new recruit to support neuropsychiatry

EVATT TAMINE - CROSS BY MR. VARNADO

1 of traumatic brain injury; is that fair?

2 **A.** Yes.

3 **Q.** So, I am going to go through a few more to just walk
4 through the entirety of the \$25 million and its purpose
5 back in 2011.

01:22:14

6 You also have a 2-million-dollar donation
7 which would support the administrative needs, and it's in
8 connection with that -- that new recruit position that I
9 referenced previously. Correct?

01:22:27

10 **A.** Yes.

11 **Q.** And then I have drawn some arrows here because they
12 sort of go together.

13 The next part of the donation would be
14 \$3 million for a new recruit to focus on imaging,
15 genetics, cellular and molecular biology. Correct?

01:22:39

16 **A.** Yes.

17 **Q.** And, again, a 2-million-dollar endowment to support
18 research assistants and lab and other things to support
19 that chair?

01:22:50

20 **A.** Yes.

21 **Q.** The next one is \$3 million to the intervention --
22 interventional neuropsychiatry program and deep brain
23 stimulation, transcranial magnetic stimulation and
24 neuropsychopharmacology. Again, another -- another
25 teaching position --

01:23:08

EVATT TAMINE - CROSS BY MR. VARNADO

1 **A.** Yes.

2 **Q.** -- and research position at the university, with a
3 corresponding funding for the administrative expenses to
4 go along with that?

01:23:16

5 **A.** Yes.

6 **Q.** All right. And then the last one. Here, again, this
7 is a 3-million-dollar endowment for neuropsychiatry of
8 military posttraumatic stress syndrome. So, someone who
9 is going to come in and research things that happened to
10 veterans -- posttraumatic stress syndrome for veterans and
11 others at Baylor University --

01:23:31

12 **A.** Yes.

13 **Q.** -- and the corresponding administrative support for
14 that position?

01:23:40

15 **A.** Yes.

16 **Q.** And these were the true purposes of this donation as
17 of 2011?

18 **A.** That's correct.

19 **Q.** And these monies were, in fact, given and were
20 entrusted to Mr. Yudnofsky to deploy in this manner?

01:23:52

21 **A.** Yes.

22 **Q.** And I just mention that in terms of ensuring --
23 because part of this letter insists that there's going to
24 be oversight as to how the funds were used.

01:24:07

25 **A.** That's right.

EVATT TAMINE - CROSS BY MR. VARNADO

1 Q. And is there a particular reason why that was
2 important in your experience with donating to universities
3 and colleges?

01:24:17

4 A. Yes. I didn't -- I didn't fully comprehend it at
5 that time but I came to understand that it's a common
6 experience with donors to institutions, academic
7 institutions, that one makes a gift, and the institution
8 gratefully accepts it, but then later changes the use of
9 the money to some other purpose.

01:24:34

10 One of the reasons the Jefferson Scholars
11 was established was the donors to the University of
12 Virginia found that again and again that their gifts were
13 going off to different purposes, so they established their
14 own scholarship fund. But all along that was a common
15 experience.

01:24:49

16 Q. So part of the direction of that letter, is to ensure
17 that those monies, that 25 million, is deployed exactly as
18 set forth in the terms of that letter for those very
19 worthwhile purposes that were set forth in that letter?

01:25:02

20 A. Yes.

21 Q. I want to sort of shift gears again and maybe get to
22 another topic that will get close to the end.

01:25:14

23 You testified that you started working for
24 Mr. Brockman in connection with the AEBCT in 2004,
25 correct?

EVATT TAMINE - CROSS BY MR. VARNADO

1 **A.** Yes.

2 **Q.** And you worked for Mr. Brockman in that capacity for
3 14 years?

4 **A.** Yes.

01:25:19 5 **Q.** Fair to say that you had worked closely with
6 Mr. Brockman?

7 **A.** Yes.

8 **Q.** Okay. And the search warrant that was executed at
9 your home in Bermuda in September of 2018, that happened
01:25:30 10 on the 5th of September, right?

11 **A.** That's right.

12 **Q.** All right. And if I am correct, the search warrant
13 said that there were, quote, reasonable grounds for
14 suspecting that Evatt Tamine -- Evatt Tamine has benefited
01:25:43 15 from criminal conduct. Do you recall reading that in the
16 search warrant?

17 **A.** Yes.

18 **Q.** And it is my understanding that you disagree with
19 that conclusion about you in the search warrant?

01:25:50 20 **A.** Yes.

21 **Q.** And, in fact, your current attorneys have submitted
22 affidavits saying that you may not have even needed
23 immunity, because it's unclear what offenses that you
24 could have committed as a result of working for

01:26:02 25 Mr. Brockman and the St. John's Trust Company?

EVATT TAMINE - CROSS BY MR. VARNADO

1 **A.** That's right.

2 **Q.** And during your testimony to the Grand Jury about
3 Mr. Brockman, you stated that, "You never thought of what
4 you were doing as criminal conduct."

01:26:12 5 **A.** That's right.

6 **Q.** All right. And at one of your meetings with the
7 Department of Justice back in 2019, you told the
8 government that you didn't know if, I quote,
9 Mr. Brockman's motivation for setting up his offshore
10 trust was for tax evasion or for estate planning. Do you
11 recall saying that?

12 **A.** Yes.

13 **Q.** Now, Mr. Brockman was indicted in October of 2020,
14 correct?

01:26:32 15 **A.** Yes.

16 **Q.** And after his indictment was unsealed, some period of
17 time after that, in December, it's our understanding that
18 you told the Department of Justice that while you were
19 employed by Mr. Brockman, you did not believe that you
20 were engaged in any tax evasion?

01:26:45

21 **A.** That's right.

22 **Q.** And I think you also told the Department of Justice
23 that while you were employed by Mr. Brockman, you didn't
24 believe you engaged in any money laundering?

01:26:55 25 **A.** That's right.

EVATT TAMINE - CROSS BY MR. VARNADO

01:27:06

1 Q. And you told the Department of Justice that you
2 believed that Mr. Brockman did not need to pay federal
3 income taxes on unreported foreign income that you managed
4 for him, until that income was brought back into the
5 United States?

6 A. Yes, that's my belief. Or was my belief.

7 Q. And still is your belief?

8 A. Still is my belief.

01:27:16

9 Q. And you filed several affidavits in Bermuda courts in
10 connection with litigation that is taking place there
11 related to the St. John's Trust Company, fair?

12 A. Yes.

01:27:27

13 Q. And in January of -- 4th of 2021, your affidavit that
14 you filed in connection with that matter stated, and I
15 quote --

16 MR. LANGSTON: Objection, hearsay.

17 MR. VARNADO: This is the witness's own
18 statement.

01:27:34

19 MR. LANGSTON: Well, Your Honor, if he wants to
20 ask him that -- this is improper impeachment. He is just
21 introducing affidavits that are not -- they are
22 out-of-court statements intended to prove the truth of the
23 matter asserted.

01:27:44

24 THE COURT: Technically an affidavit is hearsay
25 unless you guys agree to allow it, which you are not.

EVATT TAMINE - CROSS BY MR. VARNADO

1 MR. VARNADO: I can ask him if he said this,
2 Your Honor.

3 THE COURT: You can ask him and you can always
4 use it for impeachment.

01:27:52 5 MR. VARNADO: Sure.

6 BY MR. VARNADO:

7 Q. Mr. Tamine, did you state, "At no time while I was
8 working for Mr. Brockman did I believe that Mr. Brockman
9 was engaged in criminal tax evasion as alleged in the
01:28:00 10 indictment?"

11 A. Yes.

12 Q. And just this weekend did you tell the United States
13 government that you believed that Mr. Brockman is, quote,
14 innocent of the charges?

01:28:07 15 A. Yes.

16 Q. And did you tell the United States government that,
17 quote, Mr. Brockman did everything properly?

18 A. I believe so, yes.

19 Q. And that he, I quote, never took a cent, end quote,
01:28:19 20 from the AEBCT?

21 A. That's right.

22 Q. And you also told the government that some of the
23 information in the indictment is factually wrong?

24 A. To my mind, yes.

01:28:28 25 Q. And did you tell the United States Government that

EVATT TAMINE - REDIRECT BY MR. LANGSTON

1 the bank fraud case against Mr. Brockman is, and I quote,
2 crap?

3 **A.** I don't think I used the word "crap."

4 **Q.** It's in the memo I received.

01:28:37

5 **A.** Oh, I am -- I might have said something else. A lot
6 of bunk or something. I don't think I used -- I might
7 have said crap. I don't recall saying it.

8 **Q.** Crap or bunk?

9 **A.** Yeah.

01:28:46

10 **Q.** One of the two?

11 **A.** Yes.

12 MR. VARNADO: Okay. Pass the witness.

13 THE COURT: Redirect?

14 MR. LANGSTON: Yes, Your Honor.

01:28:54

15 **REDIRECT EXAMINATION**

16 By MR. LANGSTON:

17 **Q.** Mr. Tamine, let's explore your belief that you
18 believed everything that you did was legal.

19 And if I understand your testimony, you
01:29:14 20 believed it was legal both in Bermuda and in the United
21 States?

22 **A.** I -- I don't know about the U.S. I can only talk
23 about Bermuda.

24 **Q.** Okay. But you didn't view yourself as a criminal?

01:29:25

25 **A.** No.

EVATT TAMINE - REDIRECT BY MR. LANGSTON

1 Q. And so you believed you had nothing to hide?

2 A. That's right.

3 Q. Okay. If we can put Exhibit 25 up there on the
4 screen, please.

01:30:02

5 THE CASE MANAGER: You want the ELMO?

6 MR. LANGSTON: I do.

7 MR. MAGNANI: The ELMO is on.

8 BY MR. LANGSTON:

01:30:08

9 Q. This is an e-mail you sent to Mr. Brockman in March
10 of 2014?

11 A. Yes.

12 Q. And you told him, "Other than seeing Robert in
13 person, I should not use e-mail or phone to talk to Robert
14 about his divorce?"

01:30:20

15 A. Yes.

16 Q. And that was your belief in 2014, that you were
17 concerned about using e-mail or phone to talk to Robert
18 Smith about his divorce?

01:30:33

19 A. It was my -- it was the world I'd lived in. I don't
20 use those things for a number of purposes.

21 Q. Even though you were -- you were doing nothing wrong,
22 and there was no -- nothing to worry about?

23 A. That's right.

01:30:50

24 Q. Okay. Let's talk about 2011. Did you fabricate a
25 memo about a conversation you had had with a dead man?

EVATT TAMINE - REDIRECT BY MR. LANGSTON

1 **A.** No. I had a conversation -- I added some bits to a
2 conversation I had with someone who'd passed away, but I
3 had a conversation with Trevor Lloyd.

4 **Q.** Okay. Let's talk about it. Who was Trevor Lloyd?

01:31:05

5 **A.** Trevor Lloyd was the man who was the shareholder and
6 director of the protector company to the Brockman Trust.

7 MR. LANGSTON: And, Your Honor, I am going to
8 offer 25. I'm sorry about that.

9 THE COURT: Okay. Any objection to Exhibit 25?

01:31:17

10 MR. VARNADO: I would say I would object to the
11 government impeaching its own witness in an unrelated
12 matter as to competency, period.

13 MR. LANGSTON: Your Honor, any party can
14 impeach a witness.

01:31:26

15 THE COURT: Right. Respectfully, overruled.

16 MR. VARNADO: And I haven't seen the document
17 so --

18 MR. LANGSTON: It's 25.

19 MR. VARNADO: Oh, okay.

01:31:35

20 THE COURT: Any objection to 25?

21 MR. VARNADO: No, no. No, I'm sorry.

22 THE COURT: No objection, Exhibit 25 is
23 admitted.

24 BY MR. LANGSTON:

01:31:42

25 **Q.** So Trevor Lloyd was the trust protector of the

EVATT TAMINE - REDIRECT BY MR. LANGSTON

1 Brockman Trust?

2 **A.** Yes.

3 **Q.** And that's the person with the power to replace the
4 trustee?

01:31:50

5 **A.** Yes.

6 **Q.** Okay. And Mr. Lloyd died unexpectedly in 2010?

7 **A.** That's correct.

8 **Q.** And you said that you had a conversation with
9 Mr. Lloyd prior to his death?

01:32:03

10 **A.** Yes.

11 **Q.** Now, I am going to show what I will mark as 134 for
12 identification. And I'll switch to the ELMO now. That
13 may make things easier.

14 Okay. This is one of your to-do lists
15 from December of 2011?

01:32:32

16 **A.** Yes.

17 **Q.** Mr. Brockman is the author of this document?

18 **A.** Yes, sir.

19 **Q.** And these are the instructions that he's given to you
20 as your -- as his employer?

01:32:41

21 MR. VARNADO: Objection to leading.

22 MR. LANGSTON: Your Honor -- I think given the
23 mode of the examination it may be easier --

24 THE COURT: I am going to allow it.

01:32:54

25 BY MR. LANGSTON:

EVATT TAMINE - REDIRECT BY MR. LANGSTON

1 Q. These are the instructions that Mr. Brockman has
2 given to you as his employee?

3 A. Yes.

4 Q. Okay. Let's look on page 3 of the document. It
01:33:03 5 says, "Document telephone conversation with Trevor Lloyd,
6 prior to his death, where he resigns and concurs with your
7 suggestion as Graham Wood personally as successor.
8 Provide a wet ink signed copy of this memo to Bob."

9 A. Yes.

01:33:21 10 Q. And Trevor Lloyd did not resign in that conversation?

11 A. No, Trevor Lloyd did not resign.

12 Q. He did not concur with your suggestion that Graham
13 Wood personally replace him as the successor?

14 A. That is right.

01:33:32 15 Q. So you forged this document?

16 A. No. I don't think it would be a forgery. I created
17 the document that -- that documented conversation I had
18 with Trevor Lloyd, and I added some bits to deal with a --
19 a practical problem. The trusts -- the protector -- the
01:33:51 20 person behind the protector had passed away. I needed to
21 deal with it in some way.

22 Q. By creating a document with false information?

23 A. Well, by creating a document that refers to a
24 conversation, and I added some stuff to the conversation,
01:34:03 25 yes.

EVATT TAMINE - REDIRECT BY MR. LANGSTON

1 Q. Stuff that didn't happen?

2 A. Yes.

3 Q. And you did that at Mr. Brockman's direction?

4 A. Yes.

01:34:09

5 Q. And so what you're saying is that -- and I -- you're
6 an expert in Bermuda law and I am not. In Bermuda law, is
7 submitting a fake document to a bank legal?

8 A. I don't -- I don't know. It depends on what document
9 it is. The question I was asked was, in Bermuda law is

01:34:29

10 the trust a valid trust.

11 Q. Well, my question for you right now --

12 A. Sure.

13 Q. -- is, is it illegal in Bermuda to submit a fake
14 document to a bank?

01:34:37

15 A. I -- I imagine it could be in certain circumstances.

16 Q. You're testifying that you are unaware if submitting
17 a fake document would be illegal?

18 A. I -- I don't know, depends on what the document is.

19 Q. And the reason you're creating this document

01:34:52

20 containing false information is that one day you may need
21 to explain how Graham Wood became the successor?

22 A. Well, the reason the document was created was because
23 there was no mechanism to get from Point A to Point B
24 where someone had died quite suddenly.

01:35:06

25 Under the -- under the terms of the

EVATT TAMINE - REDIRECT BY MR. LANGSTON

1 protector documents, and the trustee, we have no mechanism
2 for that, and we had to deal with it. That's why it was
3 done, just to get from Point A to Point B. But, yes, it
4 was a -- it contained false information.

01:35:20

5 **Q.** Your testimony is there is no mechanism in Bermuda to
6 address someone dying unexpectedly in this role?

7 **A.** That's not my testimony. I am sure there was another
8 way of doing it, but this was the easiest, most -- the
9 easiest way to do it.

01:35:32

10 **Q.** Okay. And let's go -- and so let's explore this a
11 little more about your belief that this is legal.

12 MR. LANGSTON: I'll offer 134, Your Honor.

13 THE COURT: All right.

14 MR. VARNADO: No objection.

01:35:42

15 THE COURT: No objection, Exhibit 134 is
16 admitted.

17 BY MR. LANGSTON:

18 **Q.** All right. I will mark this as 135. And 135 is an
19 encrypted e-mail that you are sending to Mr. Brockman in
20 October of 2013?

01:36:11

21 **A.** Yes.

22 **Q.** And you're describing that you're going from Bermuda
23 to New York?

24 **A.** Yes.

01:36:17

25 **Q.** And you write to him, "I'll be deleting all e-mail

EVATT TAMINE - REDIRECT BY MR. LANGSTON

1 addresses from my phone before going to the Bermuda
2 airport and will set them up again in the taxi going to
3 the hotel?"

4 **A.** Yes.

01:36:30

5 **Q.** So, you were uncomfortable traveling through customs
6 with e-mail addresses in your phone?

7 **A.** In accordance with the problem -- well, with the
8 issues that had always been brought up by Mr. Brockman,
9 yes.

01:36:46

10 **Q.** Are so in 2013, you were concerned enough about law
11 enforcement to be deleting your phone prior to passing
12 through customs?

13 MR. VARNADO: Objection, leading.

14 THE COURT: I am going to allow it. The issue
01:37:03 15 here is, this witness is both adverse -- I mean, I don't
16 know exactly what the status of the witness is; but I am
17 letting both sides direct and cross-examine the witness as
18 they see fit.

19 MR. LANGSTON: Thank you, Your Honor.

01:37:16

20 BY MR. LANGSTON:

21 **Q.** So, my question was, you were concerned enough about
22 2013, about law enforcement, that you would delete your
23 phone, prior to going through customs?

24 **A.** I don't know. I don't recall this e-mail, and I
01:37:28 25 don't recall what I was concerned about at the time.

EVATT TAMINE - REDIRECT BY MR. LANGSTON

1 There was a direction I had from Mr. Brockman about
2 traveling across into the U.S. with computers, with other
3 things, and this was just in accordance with that.

01:37:42

4 I don't know if I was particularly
5 concerned about law enforcement. I don't think I was.
6 But --

7 **Q.** So you were worried about a pickpocket that --

8 **A.** No. No.

01:37:50

9 **Q.** -- that would take your phone and then look through
10 your e-mail addresses when you were going through customs?

11 **A.** No, it was -- it was in -- look, it was in line with
12 Mr. Brockman's concerns about me crossing the border,
13 crossing through officialdom, crossing through border
14 security. But, that's it. I am -- I can't say I was
15 specifically worried about law enforcement.

01:38:03

16 **Q.** Okay. You were worried about the government looking
17 at the e-mail addresses contained in your phone?

18 **A.** Again, I wasn't worried. It was just in accordance
19 with the practice that we had in place.

01:38:15

20 **Q.** And did you actually delete all the e-mails from your
21 phone?

22 **A.** Probably not.

23 **Q.** So, then, you wouldn't have needed to add an e-mail
24 contact?

01:38:25

25 **A.** No, probably not.

EVATT TAMINE - REDIRECT BY MR. LANGSTON

1 MR. LANGSTON: I'll offer 135.

2 MR. VARNADO: No objection.

3 THE COURT: 135 is admitted.

4 BY MR. LANGSTON:

01:38:51 5 Q. Let's talk a little bit more about the yacht.

6 A. Okay.

7 Q. I'll mark this as 136. All right. And these are a
8 series of e-mails between you and Mr. Brockman in 2014?

9 A. I can't see the whole thing. I can only see part of
01:39:29 10 it.

11 Q. Sure. Why don't we start at the top.

12 A. Yes.

13 Q. And let's start with the one on the bottom. This is
14 Mr. Brockman sending you his compensation plan at Reynolds
01:39:50 15 for your signature?

16 A. Yes.

17 Q. Did you negotiate this with Mr. Brockman?

18 A. No.

19 Q. In fact, he just told you what he was going to make?

01:39:58 20 A. Yes.

21 Q. And you at this point were -- had responsibility for
22 determining -- you know, for safeguarding the assets of
23 the trust, didn't you?

24 A. This is not the job of the trustee to determine the
01:40:10 25 CEO's compensation. That would be at the level with UCSH,

EVATT TAMINE - REDIRECT BY MR. LANGSTON

1 Inc. I'm not sure that -- I haven't looked at the thing.

2 I don't know what the document is.

3 **Q.** All right. So let's work our way up. So the UCSH,

4 Inc. is owned by Spanish Steps?

01:40:23

5 **A.** Yes.

6 **Q.** And Spanish Steps is owned by the AEBCT?

7 **A.** Yes.

8 **Q.** The Brockman Trust. So if Mr. Brockman set his
9 compensation at 1 billion dollars, do you feel like that

01:40:32

10 would have been outside your purview?

11 **A.** It's the job of the UCHS [sic], Inc. that has its own
12 directors. It has Mr. -- it had Mr. Thorpe as a director
13 and --

14 **Q.** Mr. Brockman --

01:40:41

15 **A.** -- Mr. Brockman was a director.

16 **Q.** -- and Mr. Deaton?

17 **A.** And Deaton later, but that's a matter for them. It's
18 not for the trustee to get involved in the compensation of
19 -- of companies down the line.

01:40:51

20 **Q.** Isn't the job of the trustee to manage the board of
21 directors of one of its subsidiaries?

22 **A.** Not really, no. I don't think so.

23 **Q.** So if you felt that Mr. Brockman, and Mr. Deaton, and
24 Mr. Thorpe, were mismanaging UCSH, that is not your

01:41:06

25 purview?

EVATT TAMINE - REDIRECT BY MR. LANGSTON

1 **A.** Well, it would have -- I mean, at what level I don't
2 know. But in terms of compensation for a CEO, that's at
3 the corporate level. That's what I am answering here.

01:41:19

4 **Q.** Whatever corporate level it is, it required your
5 signature?

6 **A.** It must have, yes.

7 **Q.** And -- let's see, so you do sign this?

8 **A.** I must have, yes.

01:41:30

9 **Q.** Okay. And you send it to him and then you're asking
10 him a question about the yacht. "I have a thought about
11 chartering the vessel. Does it always need to be you? To
12 demonstrate a variety of charterers, could we have
13 occasions where Al Deaton or Robert Smith chartered the
14 vessel? There might be safe ways we could reimburse,
15 particularly Robert, as the transaction could be handled
16 entirely offshore."

01:41:52

17 **A.** Yes.

18 **Q.** So why the need to create fake charters?

01:42:04

19 **A.** In total, I don't recall about the charters because
20 we owned -- we owned the boat. But this is back in 2014,
21 we didn't have the boat back then. I'm a little -- I'm
22 just a little bit confused about what's referenced here
23 with the vessel.

01:42:18

24 **Q.** Why -- okay. Well, let's say this. If this is not a
25 crime, why do you need safe ways to reimburse them?

EVATT TAMINE - REDIRECT BY MR. LANGSTON

1 **A.** I -- in which part is not a crime? I'm sorry. I am
2 not following the question.

3 **Q.** You don't believe that you did anything wrong at any
4 point?

01:42:29 5 **A.** No. I said --

6 **Q.** Correct?

7 **A.** No, I didn't say that. I was asked questions about
8 the Brockman Trust. I believe the Brockman Trust is a
9 perfectly valid, under Bermuda law, structure. I still
01:42:38 10 believe that.

11 **Q.** So to clarify that, do you believe you committed a
12 crime with respect to one of the other structures?

13 **A.** No. I don't. I don't know.

14 **Q.** Okay.

01:42:45 15 **A.** I mean it's a fairly broad question for me to answer.
16 I don't know.

17 **Q.** Well, let's -- do you think there was any issue with
18 the way you were handling the vessel?

19 **A.** The vessel?

01:42:54 20 **Q.** Yes.

21 **A.** I don't believe so. I don't think so.

22 **Q.** So why do you need safe ways to reimburse Mr. Deaton
23 or Mr. Smith?

24 **A.** I don't know. I don't recall the wording. And as I
01:43:05 25 said before, this is in 2014. We didn't own the boat, so

EVATT TAMINE - REDIRECT BY MR. LANGSTON

1 I don't even know the context of this.

2 Q. Okay. And what does Mr. Brockman respond to your
3 thoughts about coming up with these straw charterers?

4 A. "I agree with your thoughts here."

01:43:18

5 Q. Okay.

6 MR. LANGSTON: I'll offer 136.

7 MR. VARNADO: No objection.

8 THE COURT: 136 is admitted.

9 BY MR. LANGSTON:

01:43:27

10 Q. Are you familiar with what's called the special
11 testamentary power of appointment?

12 A. I know the phrase.

13 Q. And that's a document that allows a person to sort of
14 give advice to a trustee?

01:43:41

15 A. No.

16 Q. Okay. Well, what is it then?

17 A. To my understanding it's a special power of
18 appointment under the trustee, not to give advice but to
19 direct the assets of the trust. They can be -- it's given
20 effect on the death of the person who holds that power.

01:43:53

21 Q. Okay. Was there a special testamentary power of
22 appointment with respect to the Brockman Trust?

23 A. Yes.

24 Q. And you sent Mr. Brockman a draft of one in 2013,
25 right?

01:44:10

EVATT TAMINE - REDIRECT BY MR. LANGSTON

1 **A.** I got a recollection I did, yes.

2 **Q.** Right. Well, let's show you 137. And here, you are
3 sending him a draft of the exercise of the special
4 testamentary power of appointment?

01:44:27

5 **A.** Yes. I can't see the whole thing on the screen. I
6 have got the edge missing. Sorry the other edge, the
7 right -- the right-hand side. The other way. I'm still
8 getting only part of the document on the screen.

9 **Q.** How is that?

01:44:43

10 **A.** Can you -- you -- is it possible to zoom out just a
11 little bit more?

12 **Q.** The monitor -- to engage the monitor is different.
13 How's that?

01:44:59

14 **A.** I am still missing part of it. I will do the best I
15 can to read it.

16 MR. LANGSTON: May I approach?

17 THE COURT: You may approach.

18 MR. LANGSTON: I am handing you a copy of 137.

19 THE WITNESS: Okay.

01:45:04

20 MR. LANGSTON: And thanking Mr. Varnado for his
21 courtesy.

22 BY MR. LANGSTON:

23 **Q.** All right. Do you see the last line: "If not needed
24 or the laws change in some advantageous way, then the

01:45:13

25 document could be destroyed and a different document

EVATT TAMINE - REDIRECT BY MR. LANGSTON

1 prepared?"

2 **A.** Yes.

3 **Q.** And so you had a view that even though this document
4 would give an irrevocable -- was an irrevocable exercise,
5 correct?

01:45:26

6 **A.** No, it's not.

7 **Q.** And so what is it?

8 **A.** It's an exercise of a power under the trustee that
9 allows the person who holds that power to give a direction
10 as to what would happen upon their death. It's -- nothing
11 about it is irrevocable. It could be changed dozens and
12 dozens of times.

01:45:35

13 **Q.** So, why would the original need to be destroyed?

14 **A.** Because it's like a will, you get rid of previous
15 wills. It's just prudent, I would imagine.

01:45:49

16 **Q.** Okay.

17 **A.** It could be changed --

18 MR. LANGSTON: I'll offer 137.

19 THE WITNESS: Did you -- did you want me to
20 explain further on how the power worked? I'm not
21 sure if --

01:45:55

22 MR. LANGSTON: I think that may be getting us a
23 little far afield, Your Honor. I'll offer 137.

24 MR. VARNADO: No objection.

01:46:03

25 THE COURT: Without objection, 137 is admitted.

EVATT TAMINE - REDIRECT BY MR. LANGSTON

1 BY MR. LANGSTON:

2 Q. In 2014 you began to become concerned about your
3 exposure; is that fair?

4 A. My exposure?

01:46:15 5 Q. Your exposure to a potential investigation?

6 A. Yes.

7 Q. Okay. And you actually wrote a memo to Mr. Brockman
8 about that concern?

01:46:27 9 A. I wrote a memo to Mr. Brockman about my compensation,
10 and I threw that concern in there.

11 Q. Okay. And I will show you --

12 MR. LANGSTON: I am going to mark this as 138,
13 if I may approach, Your Honor.

14 THE COURT: You may approach.

01:46:38 15 BY MR. LANGSTON:

16 Q. And I'll hand the witness a copy of 138. And is this
17 the compensation memo that you wrote Mr. Brockman?

18 A. Yes, it is.

01:46:53 19 Q. And, here, you are asking for a substantial increase
20 in pay. Is that fair?

21 A. Yes.

22 Q. And we will go to Page 3 or -- Excuse me. We will go
23 to the Bates number ending in "216." Do you see that?

24 A. Yes.

01:47:16 25 Q. And you write to Mr. Brockman: "I carry all the risk

EVATT TAMINE - REDIRECT BY MR. LANGSTON

1 for you. If I am targeted the IRS would come after my
2 assets to pressure me. This is exactly what they have
3 done to a whole bunch of bankers, investments advisors and
4 lawyers."

01:47:31

5 **A.** Yes.

6 **Q.** And then I'll skip ahead a little bit. "If I am
7 targeted I have to be cut loose by you in relation to
8 Cabot and Edge. I understand and accept that risk, but I
9 am badly exposed."

01:47:43

10 **A.** Yes.

11 **Q.** Did you write that to Mr. Brockman?

12 **A.** Yes.

13 **Q.** And in response to this, did Mr. Brockman buy you a
14 3-million-dollar -- or give you \$3 million to buy a house
15 in Australia?

01:47:52

16 **A.** It was a contr- -- yes. It was part of my package,
17 yes.

18 MR. LANGSTON: I'll offer 138, Your Honor.

19 MR. VARNADO: No objection.

01:48:00

20 THE COURT: Without objection, 138 is admitted.

21 BY MR. LANGSTON:

22 **Q.** Let's talk a little bit about Regency.

23 I think you mentioned everything,
24 actually, was entirely aboveboard, Mr. Brockman was paying
25 rent.

01:48:14

EVATT TAMINE - REDIRECT BY MR. LANGSTON

1 **A.** Yes.

2 **Q.** Let's say Mr. Brockman had missed a rent payment.
3 Would you have evicted him?

4 **A.** I don't know. It didn't come to that.

01:48:23 5 **Q.** Had you told the government that you would not have
6 evicted Mr. Brockman if he stopped paying rent?

7 **A.** I might have. I can't recall. I am sure I did.

8 **Q.** Would it refresh your recollection to see a memo
9 or --

01:48:33 10 **A.** I'll accept -- I'll accept that I have said it
11 before.

12 **Q.** So, you do remember now that you would not have
13 evicted Mr. Brockman if he had stopped paying rent?

14 **A.** I guess, if it had happened, yes, I probably wouldn't
01:48:43 15 have evicted him.

16 **Q.** And Mr. Brockman required that he approve all
17 expenses associated with these, over \$2,000?

18 **A.** Yes.

19 **Q.** Have you ever rented an apartment?

01:48:57 20 **A.** Yes.

21 **Q.** Did you have approval over all expenses as the
22 tenant?

23 **A.** I -- No.

24 **Q.** Did Mr. Brockman approve the tax returns for these
01:49:11 25 entities?

EVATT TAMINE - REDIRECT BY MR. LANGSTON

1 **A.** I might have sent them to him. I can't recall.

2 **Q.** And did he suggest edits so that these entities could
3 show small profits in order to better establish their tax
4 position?

01:49:23 5 **A.** I don't remember.

6 **Q.** Let's talk a little about charity, and I will go back
7 to 134, Page 5. Are you able to see that?

8 **A.** Yes.

9 **Q.** And this, again, is the to-do list that Mr. Brockman
01:49:58 10 has given you?

11 **A.** That's right.

12 **Q.** So, Mr. Brockman is the one deciding on these
13 charitable donations?

14 **A.** He has given direction in relation to the charitable
01:50:07 15 gifts, yes.

16 **Q.** And let's just go through these.

17 Do you have a connection to Rice
18 University?

19 **A.** No.

01:50:11 20 **Q.** Did Mr. Brockman's son attend Rice University?

21 **A.** Later he did, I believe.

22 **Q.** Did he study physics?

23 **A.** I don't know. I'm not sure what he studied.

24 **Q.** Okay. Centre College. Do you have any relationship
01:50:23 25 to Centre College?

EVATT TAMINE - REDIRECT BY MR. LANGSTON

1 **A.** None.

2 **Q.** Did Mr. Brockman attend Centre College?

3 **A.** I believe so, yes.

4 **Q.** Lance Gould is Mr. Brockman's cardiologist?

01:50:32 5 **A.** I don't know about that.

6 **Q.** And Stuart Yudofsky has provided medical treatment
7 for one of Mr. Brockman's family members?

8 **A.** I believe so.

9 **Q.** I am taking 134 off the screen.

01:50:53 10 And at various times you would ask
11 Mr. Brockman permission to make a charitable donation?

12 **A.** Yes.

13 **Q.** You, as the trustee of a multi-billion-dollar trust,
14 would have to go to Mr. Brockman for permission to give a
01:51:03 15 donation?

16 **A.** Yes.

17 MR. LANGSTON: And I'll show -- I am going to
18 mark this as 139.

19 May I approach, Your Honor?

01:51:36 20 THE COURT: You may approach.

21 MR. LANGSTON: I am handing the witness a copy
22 of what has been marked as 139.

23 BY MR. LANGSTON:

24 **Q.** And this is an e-mail between you and Mr. Brockman on
01:51:44 25 the encrypted e-mail server?

EVATT TAMINE - REDIRECT BY MR. LANGSTON

1 A. Yes.

2 Q. And you were requesting to give a charitable donation
3 to put a 16-year-old girl through boarding school?

4 A. Yes.

01:51:53 5 Q. And, so, we are talking less than \$100,000?

6 A. Probably less than 40.

7 Q. Okay. And, so, you have to get Mr. Brockman's
8 permission to make a 40-thousand-dollar donation?

01:52:10 9 A. In this instance, I wanted to ask him if he was okay
10 with it because it was unusual. There are other donations
11 I have made where I have not asked him.

12 Q. Mr. Brockman has no on-paper control over the trust?

13 A. That's right.

01:52:24 14 Q. He has no right, on paper, to decide where charitable
15 contributions are given?

16 A. That's right.

17 Q. And you are asking him, however, for permission?

01:52:34 18 A. He's a beneficiary of the trust. He's a former
19 protector. He has given lots of direction in relation to
20 the trust. I have not said any of that didn't happen. I
21 did go to him for direction.

01:52:46 22 Q. In fact, you asked him, "I'm sorry to ask you, but
23 would you consider a charitable donation to put a
24 16-year-old girl through boarding school for the next two
25 years?"

EVATT TAMINE - REDIRECT BY MR. LANGSTON

1 **A.** Yes.

2 **Q.** So, you're asking for permission?

3 **A.** Yes.

4 **Q.** And he denies that permission?

01:52:51

5 **A.** Yes.

6 **Q.** And after he denies the permission, you don't make
7 the donation?

8 **A.** No.

9 **Q.** Even though you thought it was a good idea?

01:52:58

10 **A.** No.

11 **Q.** You didn't think it was a good idea?

12 **A.** No. No. I didn't make -- the donation didn't go
13 there.

14 **Q.** Okay. And you thought it was a good idea to make the
15 donation?

01:53:04

16 **A.** I thought it was, yes.

17 **Q.** And after Mr. Brockman told you not to do it, you
18 didn't do it?

19 **A.** No. I paid it myself.

01:53:13

20 **Q.** But you didn't use the trust's money?

21 **A.** No.

22 **MR. LANGSTON:** I'll offer 139.

23 **MR. VARNADO:** No objection.

24 **THE COURT:** No objection, 139 is admitted.

01:53:23

25 **BY MR. LANGSTON:**

EVATT TAMINE - REDIRECT BY MR. LANGSTON

1 Q. I think you mentioned that you had Mr. Smith's
2 consent to look through the records at Mr. Kepke's?

3 A. Yes.

01:53:37

4 Q. Do you concoct a pretext to give to Mr. Smith in
5 order to get his permission?

6 A. I told him that I wanted to look for the name of a
7 person who had done a valuation on various of the
8 portfolio companies of Vista that Point had an interest
9 in. Yes, I told him that.

01:53:48

10 Q. Did you want to do that?

11 A. No.

12 Q. And, so, you lied to Mr. Smith?

13 A. Yes.

14 Q. So, he gave his consent based on you lying to him?

01:53:56

15 A. Yes.

16 Q. Okay. You -- in addition to meeting with the
17 government, you have actually met with attorneys from
18 Jones Day in this case?

19 A. Yes.

01:54:08

20 Q. And you have actually done so twice?

21 A. Yes.

22 Q. In fact, there was a, you know, year-plus-long period
23 where you had met with Jones Day more recently than you
24 met with the government?

01:54:17

25 A. I'm sorry. I am not following that question. It

EVATT TAMINE - REDIRECT BY MR. LANGSTON

1 was --

2 **Q.** You met with Jones Day on or around May of 2019?

3 **A.** Yes.

4 **Q.** And then you didn't meet with the government again
5 until 2021?

6 **A.** Yes.

7 **Q.** And you have actually filed a motion in this case
8 trying to strike a portion -- or an entity associated with
9 you has filed a motion in the case trying to strike a

10 portion of the indictment?

11 **A.** Just to strike a name from the indictment, yes. I am
12 not involved in that, so -- but that's what I believe has
13 happened.

14 **Q.** And you have immunity in the United States. Correct?

15 **A.** Yes.

16 **Q.** You do not have worldwide immunity?

17 **A.** That's right.

18 **Q.** And, in fact, you are concerned about a potential
19 criminal investigation into you in Bermuda?

20 **A.** Well, it's still there. Yes.

21 **Q.** And you haven't been back to Bermuda since 2018?

22 **A.** That's right.

23 **Q.** And you are concerned about a potential criminal
24 investigation into you in Switzerland?

25 **A.** There is an investigation in Switzerland, yes.

EVATT TAMINE - RECROSS BY MR. VARNADO

1 Q. And that concerns you?

2 A. Of course. Yes.

3 Q. And you don't have immunity in Bermuda or -- you
4 don't have immunity in Bermuda?

01:55:23 5 A. No.

6 Q. And you don't have immunity in Switzerland?

7 A. No.

8 Q. And your immunity agreement with the government
9 certainly doesn't protect you from civil lawsuits?

01:55:31 10 A. No.

11 Q. And you are certainly exposed to a number of civil
12 lawsuits related to your conduct here?

13 A. Well, I am subject to a number of civil lawsuits,
14 yes.

01:55:44 15 MR. LANGSTON: Just one moment, Your Honor.

16 Nothing further.

17 THE COURT: Okay.

18 MR. VARNADO: Very brief, Your Honor.

19 THE COURT: All right.

01:55:55 20 **RECROSS-EXAMINATION**

21 BY MR. VARNADO:

22 Q. Mr. Tamine --

23 I'm sorry.

24 MR. LANGSTON: You go ahead. I'll get out of

01:55:59 25 your way.

EVATT TAMINE - RECROSS BY MR. VARNADO

1 MR. VARNADO: That's okay. Take your time.

2 BY MR. VARNADO:

3 Q. -- Mr. Langston asked you about meetings with Jones
4 Day. The government knows about that because you've told
5 them --

01:56:06

6 A. Yes.

7 Q. -- you were meeting with Jones Day?

8 A. Yes.

9 Q. And the issue of multiplier effect in Government's
10 Exhibit 139, does that mean that Mr. Brockman wants to
11 donate to charities and wants the trust to donate to
12 charities that are going to help more people?

01:56:12

13 A. Yes.

14 MR. VARNADO: No further questions.

01:56:26

15 MR. LANGSTON: We're done with Mr. Tamine.

16 THE COURT: Thank you. Mr. Tamine, safe
17 travels, sir.

18 THE WITNESS: I think I have missed my flight.

19 THE COURT: You missed it already?

01:56:36

20 THE WITNESS: Well, I won't get to the airport
21 in time.

22 THE COURT: We did our best.

23 THE WITNESS: Thank you. Thank you, Your
24 Honor.

01:56:41

25 THE COURT: Sure.

THOMAS WISNIEWSKI, M.D. - DIRECT BY MR. LOONAM

1 MR. LOONAM: Are you going to take a witness
2 out of order now?

3 MR. LANGSTON: Yes.

01:56:52

4 MR. LOONAM: Your Honor, we're taking a witness
5 out of order due to the Doctor's clinical schedule.

6 THE COURT: Okay.

7 MR. LOONAM: And we thank the government for
8 reaching the accommodation.

9 We call Dr. Thomas Wisniewski.

01:57:27

10 THE COURT: Doctor, if you could just step
11 forward, sir. If you would just stop right there and I
12 will swear you in.

13 (Witness sworn.)

14 THE COURT: Okay. Please take the stand.

01:57:48

15 Also, sir, with the mask protocol, when you're on the stand
16 and answering questions you don't have to wear your mask.

17 THE WITNESS: Okay. Great. Thank you.

18 THE COURT: Sure.

19 **THOMAS WISNIEWSKI, M.D.,**

01:57:56

20 duly sworn, testified as follows:

21 **DIRECT EXAMINATION**

22 BY MR. LOONAM:

23 **Q.** Good afternoon, Doctor.

24 **A.** Good afternoon.

01:57:59

25 **Q.** Can you please state and spell your name for the

KATHY MILLER, RMR, CRR - kathy@miller-reporting.com

THOMAS WISNIEWSKI, M.D. - DIRECT BY MR. LOONAM

1 record?

2 **A.** Sure. Thomas Wisniewski. The last name is
3 W-i-s-n-i-e-w-s-k-i.

4 **Q.** And thank you, Doctor.

01:58:13

5 What do you do for a living?

6 **A.** I am a neurologist and a neuropathologist. I am also
7 a neuroscientist. I do research.

8 **Q.** And -- and where do you work?

9 **A.** At New York University Grossman School of Medicine.

01:58:29

10 **Q.** At NYU --

11 **A.** Yes.

12 **Q.** -- medical school?

13 **A.** NYU.

14 **Q.** And what positions do you hold at NYU medical school?

01:58:41

15 **A.** There's a fair number. I am the director of the NYU
16 Alzheimer's Disease Research Center. That's a National
17 Institutes of Health funded center that's been continually
18 funded for 31 years.

19 I also direct the conformational disorders
01:59:05 20 laboratory, which also has had NIH funding continuously
21 for 30 years.

22 I am also the Director for the Center for
23 Cognitive Neurology at NYU. I am the Vice Chair of
24 Research for Neurology. There is a fair number of
01:59:23 25 positions.

KATHY MILLER, RMR, CRR - kathy@miller-reporting.com

THOMAS WISNIEWSKI, M.D. - DIRECT BY MR. LOONAM

1 Q. Yeah. Just for the -- trying to short-circuit this,
2 I am going to put up what's already preadmitted as Defense
3 Exhibit 23.

01:59:38

4 Is this your -- your CV or resume,
5 Dr. Wisniewski?

6 A. Yes.

7 Q. And it's a 49-page document. On the first page, you
8 know, are some of the positions you have held and still
9 currently hold?

01:59:48

10 A. That's correct.

11 Q. Okay. So, in your positions at NYU, what different
12 types of responsibilities do you have?

02:00:19

13 A. Well, I see patients. I am a clinician. I am the
14 director for the Barlow Center for Memory Evaluation and
15 Treatment.

16 I am also a researcher. I run an active
17 Alzheimer's-related research lab. And I am also an
18 educator. I direct the fellowship program, teach medical
19 students, residents, and I also have administrative
20 responsibilities.

02:00:41

21 Q. And those are your favorite?

22 A. Absolutely. They're at the end of the day.

23 Q. And are you board-certified?

24 A. Yes, in neurology and neuropathology.

02:00:53

25 Q. And how many patients do you treat at these different

THOMAS WISNIEWSKI, M.D. - DIRECT BY MR. LOONAM

1 centers?

02:01:10

2 **A.** So, the Barlow Center, typically, has from five to
3 six thousand patient encounters a year. So, I would
4 supervise all of those, but about 800 of those would be
5 myself.

6 **Q.** Okay. And what types of patients are at the Barlow
7 Center?

02:01:25

8 **A.** It's -- Alzheimer's disease is the most common, but
9 it's worried well people with mild cognitive impairment,
10 Parkinson's disease, Lewy body dementia, Prion disease.
11 So, it's a variety of neurodegenerative disorders.

12 **Q.** And have you -- have you published in connection with
13 your academic and research work?

02:01:49

14 **A.** I have. I have over 340 peer-reviewed publications.
15 And, happily, another paper was accepted this morning,
16 which I was very happy about.

17 **Q.** And can you describe some of the topics that you have
18 been published on in peer-reviewed journals?

02:02:05

19 **A.** So, it's studies of -- to gain a better understanding
20 of the underlying causes of Alzheimer's disease and also
21 other neurodegenerative disorders. I have published on
22 Parkinson's disease and Lewy body dementia. But I also
23 publish on various potential treatments, in particular for
24 Alzheimer's disease.

02:02:23

25 **Q.** And do you hold any patents?

THOMAS WISNIEWSKI, M.D. - DIRECT BY MR. LOONAM

1 **A.** Indeed. I have 30 patents. 29 of those were issued
2 in the United States.

3 **Q.** And what are the patents for?

02:02:44

4 **A.** They're mainly for novel treatments for Alzheimer's
5 disease. A couple of them are for novel diagnostic
6 methods as well.

02:03:05

7 MR. LOONAM: All right. Your Honor, at this
8 time we move to admit Dr. Wisniewski as an expert in the
9 field of neuropathology and neurology with a concentration
10 in cognitive disorders.

11 THE COURT: All right. Don't I --

12 MR. LOONAM: Normally, I get these done
13 earlier.

14 THE COURT: He is so accepted.

02:03:21

15 MR. MAGNANI: No objection.

16 BY MR. LANGSTON:

17 **Q.** Doctor, have you been actively engaged to act as an
18 expert in the matter with Robert Brockman?

19 **A.** Yes, I have.

02:03:29

20 **Q.** And you were engaged through a group called The
21 Forensic Panel?

22 **A.** That's correct.

23 **Q.** What is The Forensic Panel?

02:03:42

24 **A.** So, it's a national panel of experts to advise on
25 forensic cases. It seeks to give a peer-reviewed

THOMAS WISNIEWSKI, M.D. - DIRECT BY MR. LOONAM

1 assessment that's multidisciplinary, independent and
2 unbiased.

3 Q. And when you say it seeks to give a peer-review
4 process, what is that?

02:04:01

5 A. So, multiple experts on different facets of a
6 particular forensic problem work together to assess what
7 the truth of the matter is and to formulate reports.

8 Q. And did you collaborate with other experts on this
9 matter?

02:04:26

10 A. Yes. Dr. Agronin, Guilmette, and also a
11 neuroradiologist, Dr. Whitlow.

12 Q. And on Dr. Guilmette, what expertise do you
13 understand Dr. Guilmette has?

02:04:54

14 A. So he's a forensic neuropsychologist, and Dr. Agronin
15 is a geriatric psychiatrist.

16 Q. In connection with your work with The Forensic Panel
17 in this matter, do you know how much you have been paid?

18 A. I charge, as is the norm for the panel, \$325 an hour.
19 I am not quite sure how much I have earned.

02:05:12

20 Q. Would you be surprised to learn that you have been
21 paid \$5,000 so far in this hour -- in this matter? Do you
22 know that?

23 A. Yes.

24 Q. Okay.

02:05:19

25 A. That -- yeah.

KATHY MILLER, RMR, CRR - kathy@miller-reporting.com

THOMAS WISNIEWSKI, M.D. - DIRECT BY MR. LOONAM

1 Q. And there is an outstanding bill, I think, of
2 \$10,000?

3 A. Right. Yeah. Something like that.

02:05:28

4 Q. You sound like a busy man. Why are you doing this
5 matter?

6 A. I thought it would be fun, a different experience.

7 Q. All right. In connection with your work in this
8 case, have you reviewed any materials?

9 A. I have. Yeah.

02:05:42

10 Q. And so tell us. I mean, what have you reviewed?

11 A. So, the medical records of Mr. Brockman, the various
12 imaging studies he's had, the EEGs, and the various
13 reports that have been issued by the experts involved in
14 the case.

02:06:03

15 Q. In addition to reviewing medical records, have you
16 conducted your own examination of Mr. Brockman?

17 A. Yes. On October the 17th I met and did a
18 neurological exam and a cognitive assessment.

02:06:26

19 Q. All right. And in addition to reviewing the records
20 and conducting an examination of Mr. Brockman, did you
21 conduct any collateral interviews?

22 A. Yes. I spoke to his wife, Dorothy, and Frank
23 Gutierrez, who is his caregiver.

02:06:46

24 Q. And in can connection with this matter, did you reach
25 any conclusions?

KATHY MILLER, RMR, CRR - kathy@miller-reporting.com

THOMAS WISNIEWSKI, M.D. - DIRECT BY MR. LOONAM

1 **A.** Yes. So, I assessed Mr. Brockman to have a moderate
2 dementia related to his Parkinson's disease, Lewy body
3 dementia, and Alzheimer's disease.

02:07:12

4 **Q.** Okay. And you mentioned he had a moderate dementia,
5 Parkinson's disease, Lewy body disease and Alzheimer's
6 disease?

7 **A.** Correct. Lewy body dementia.

8 **Q.** Lewy body dementia. What -- can you -- what -- Lewy
9 body dementia, what is that?

02:07:28

10 **A.** It's a term that encompasses both Parkinson's disease
11 dementia and dementia with Lewy bodies.

12 **Q.** And can you tell us what the difference is between
13 Parkinson's disease dementia and dementia with Lewy
14 bodies?

02:07:40

15 **A.** So, it's just based on the exact timing of when the
16 cognitive symptoms start in relation to the Parkinson's
17 disease. And that division I don't find particularly
18 helpful because the pathology of both conditions is the
19 same. So --

02:07:59

20 **Q.** And in addition to making specific diagnoses of
21 Mr. Brockman, did you answer a question about his ability
22 to provide relevant and requested facts, dates and
23 specifics?

24 **A.** Yes.

02:08:12

25 **Q.** And what was your conclusion?

KATHY MILLER, RMR, CRR - kathy@millers-reporting.com

THOMAS WISNIEWSKI, M.D. - DIRECT BY MR. LOONAM

1 **A.** He lacked the capacity to do that in any accurate
2 manner.

02:08:27

3 **Q.** All right. And did you also answer a question
4 concerning whether Mr. Brockman had the mental and
5 physical stamina needed for a courtroom trial in this
6 case?

7 **A.** I did, and I thought he did not.

02:08:49

8 **Q.** Okay. All right. Let's go to your diagnoses.
9 First, you diagnosed Mr. Brockman with Parkinson's
10 disease, correct?

11 **A.** Correct.

12 **Q.** Okay. Very -- what is Parkinson's disease?

02:09:08

13 **A.** So, it's a neurodegenerative disorder with motor
14 symptoms, rigidity, bradykinesia, tremor, postural
15 instability, but also it has non-motor symptoms of
16 cognitive loss, which is variable, affecting some 30 to 70
17 percent of all cases, and there's often neuropsychiatric
18 features, too; depression is common, very common. And
19 there may be autonomic symptoms as well.

02:09:29

20 **Q.** And with respects to those -- the -- the non-motor
21 symptoms in Parkinson's disease, is there a -- you know,
22 are those all, you know, late-stage appearing symptoms?

02:09:53

23 **A.** No. They can occur quite early in the
24 symptomatology, in fact, at the same time as the motor
25 symptom.

THOMAS WISNIEWSKI, M.D. - DIRECT BY MR. LOONAM

1 Q. Okay. And the Parkinson's diagnosis, what is that
2 based on?

3 A. Well, the diagnosis of Parkinson's disease is really
4 a clinical exam determination, but it can be corroborated
5 with various imaging studies such as a dopamine
6 transporter scan, a DaTscan, which Mr. Brockman had, and
7 that particular scan confirmed the clinical impression of
8 the Parkinson's disease.

9 Q. Okay. The -- you said Parkinson's is progressive?

10 A. Yes. Unfortunately, all these neurodegenerative
11 disorders just get worse.

12 Q. And what's the -- you know, is there -- well, strike
13 that.

14 You mentioned that there were cognitive
15 issues associated with Parkinson's disease. Is there
16 any -- well, you talk about Parkinson's dementia, what is
17 that?

18 A. So, it's cognitive loss in association with
19 Parkinson's disease.

20 Q. And what's the basis for your diagnosis of
21 Parkinson's disease dementia?

22 A. The presence of the clear Parkinson's disease
23 symptoms, the confirmation of the diagnosis, and also the
24 clear presence of dementia.

25 Q. And what about the Alzheimer's disease? What is

THOMAS WISNIEWSKI, M.D. - DIRECT BY MR. LOONAM

1 Alzheimer's disease?

2 **A.** So, it's the most common neurodegenerative disorder,
3 and it's characterized by the accumulation of amyloid
4 plaques in the brain as well as neurofibrillary tangle
5 pathology, tau-related pathology, and there is -- vascular
6 pathology also is part of Alzheimer's disease.

7 **Q.** And -- and what are the -- the symptoms associated
8 with Alzheimer's disease?

9 **A.** So, it typically starts with memory impairment,
10 short-term memory, in particular, but then it really
11 affects all cognitive domains as the disease progresses.

12 **Q.** All right. And what are -- what are the cognitive
13 domains?

14 **A.** So, executive function, visual spacial function,
15 memory function, motor memory. So all of these domains
16 are affected.

17 **Q.** All right. And you stated -- have we covered all of
18 the neurodegenerative diseases you have diagnosed
19 Mr. Brockman with?

20 **A.** Those were the three.

21 **Q.** And did you also diagnose him with depression?

22 **A.** Yes. But that's more a psychiatric. And depression
23 is a very common comorbidity in Lewy body dementia as well
24 as Alzheimer's disease.

25 **Q.** All right. You testified that you diagnosed

THOMAS WISNIEWSKI, M.D. - DIRECT BY MR. LOONAM

1 Mr. Brockman with a moderate dementia?

2 **A.** Correct.

3 **Q.** All right. And what is the basis for your diagnosis
4 of Mr. Brockman with a moderate stage dementia?

02:13:34

5 **A.** So, it's the degree of functional impairment that he
6 had when I examined and spoke to him. The degree of his
7 cognitive impairment as well as the collateral information
8 from his wife and Frank Gutierrez.

02:13:58

9 **Q.** All right. And so why -- tell me about the
10 impairment in those -- in his daily functioning that lead
11 to the diagnosis as a -- as a moderate dementia.

12 **A.** So, he's really dependent on all activities of daily
13 living by the people around him.

02:14:24

14 He is not able to dress by himself. He is
15 confused as to where he is. He has difficulty with being
16 able to feed himself, and prepare food.

17 So, these are basic activities of daily
18 living that his wife, his caregiver report, and his level
19 of cognitive function is consistent with those
20 impairments.

02:14:56

21 **Q.** And when you say his level of cognitive function,
22 what are you referring to?

23 **A.** Well, on the neuropsychological testing that he has
24 had done, and the Mini-Mental State Exam, which I
25 performed, the multiple MoCAs that he has had. So he's

02:15:10

THOMAS WISNIEWSKI, M.D. - DIRECT BY MR. LOONAM

1 had consistent, very poor performance on these cognitive
2 measures which have been consistent across examiners on
3 multiple occasions.

02:15:32

4 **Q.** All right. So, let's talk about the different stages
5 of dementia and -- just to get a sense for what's
6 entailed.

7 Tell us, what is mild dementia? What is
8 the significance if somebody is diagnosed with a mild
9 dementia?

02:15:44

10 **A.** So, mild dementia is a degree of impairment that is
11 enough to interfere with daily living activity, and it's
12 associated with moderate memory dysfunction, often
13 primarily short-term memory, but also some degree of
14 long-term memory.

02:16:09

15 There is moderate dysfunction of judgment,
16 and hence patients are often unable to handle finances
17 properly. There's moderate impairment of orientation, so
18 in -- in our patients, when that diagnosis is made, we
19 tell them they can't drive.

02:16:35

20 If they have a job function like being a
21 physician, or a lawyer, or a judge, we tell them that they
22 have to stop practice.

23 And that's often not very well-taken, but
24 that's something that we work with the patient and their
25 families to implement, because even a mild dementia is

02:16:52

THOMAS WISNIEWSKI, M.D. - DIRECT BY MR. LOONAM

1 something that is quite significant and impairs a job
2 function.

3 Q. Okay. And when we are talking about mild dementia,
4 dementia is sort of an overarching term; is that correct?

02:17:08

5 A. Yes. Yeah.

6 Q. And so the symptoms you just described, would that
7 apply to -- and if I say mild Alzheimer's, is that the
8 same thing as early Alzheimer's?

02:17:26

9 A. Yes. All -- all of these are sort of loose terms for
10 the same thing.

11 Q. Yeah. So, mild is mild or early. And so -- and the
12 same for -- is it the same for early or mild Parkinson's
13 disease dementia?

14 A. Yes. Yeah.

02:17:43

15 Q. And so you gave an example, about, you know, if, you
16 know, a judge came to you and had a diagnosis of early
17 Alzheimer's, having to tell the judge that he could no
18 longer work, explain to us why that is.

02:18:11

19 A. Because there's impairment of judgment even at the
20 early stages of dementia such that it -- it would be
21 inappropriate and potentially dangerous for a judge to
22 keep judging.

02:18:31

23 And that's a situation of -- I've been in
24 them in a number of occasions and it's very difficult to
25 get that message across, but that's something that we

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1 always work with our patients and their families to make
2 sure it happens.

3 Q. And explain to me why it would be dangerous or
4 inappropriate? What's the risk?

02:18:48

5 A. Because there's -- because of the impairment of
6 judgment, there's a possibility of harm being done to --
7 in the setting of a judge, for the judgment of plaintiffs,
8 so that would be a very unfortunate end result if they
9 continued to work.

02:19:18

10 Q. And based on -- is it your opinion -- and that's
11 for -- what you're describing is for mild --

12 A. That's correct.

13 Q. -- Alzheimer's and mild Parkinson's disease dementia?

02:19:34

14 A. Correct. Any sort of dementia. If it's reached --
15 if it's gone beyond mild cognitive impairment and it is a
16 dementia, then those are the actions that we advise our
17 patients to take.

18 Q. And have you looked at -- oh, and have you ruled out
19 mild cognitive impairment with respect to Mr. Brockman?

02:19:54

20 A. Yes. Yeah.

21 Q. How would you describe your level of certainty with
22 respect to ruling out mild cognitive impairment?

23 A. I am fully certain.

24 Q. And have you reviewed neuroimaging in this case?

02:20:09

25 A. I have.

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1 Q. Okay. And what different types of neuroimaging have
2 you reviewed?

02:20:27

3 A. The structural MRI imaging, the functional FDG, the
4 fluorodeoxyglucose PET studies that have been done, as
5 well as the amyloid PET study that was done.

6 Q. Okay. Let's walk through those. And did you -- did
7 you just view the reports of those scans that were written
8 up by the neuroradiologist, or did you actually look at
9 the images themselves?

02:20:52

10 A. I looked at the images themselves. So, in general
11 clinical practice, although we very much listen to what
12 the neuroradiologist has to say in their reports, we
13 always review the scans ourselves to make sure that we --
14 as a clinical neurologist, we don't see something else.

02:21:19

15 Q. So with respect to the FDG PET scans, what did you
16 observe?

17 A. So it clearly showed hypometabolism in the parietal,
18 frontal and temporal regions, which is consistent with
19 Alzheimer's disease.

02:21:38

20 Q. And can you tell us what hypometabolism is?

21 A. So, it's the reduced utilization of the brain of
22 glucose. So the brain exclusively uses glucose for its
23 metabolic needs. It's highly metabolically active.

24 And in any of these neurodegenerative

02:22:02

25 diseases that we're talking about, there is areas of the

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1 brain which stop working properly, and that correlates
2 with the decreased glucose use.

3 And in Alzheimer's disease, or
4 frontotemporal dementia and other dementias, there is a
02:22:15 5 particular regional distribution of that hypometabolism
6 which is used diagnostically.

7 Q. And so did you observe a progression in the
8 hypometabolism in the FDG PET scans that you reviewed?

9 A. Yes. The -- there was a progression between the
02:22:40 10 March and August FDG PETs, so there was, indeed, a change
11 over a relatively short period of time.

12 Q. And when you say there was a change, what is that
13 process that you're actually able to see on -- and through
14 objective evidence on the FDG PET?

02:22:59 15 A. So, there's evidence of greater loss of brain
16 function, which is striking in a relatively short period
17 of time. Typically, clinically, FDG PETs get repeated
18 about once a year, or once every year-and-a-half, because
19 you -- you don't expect that much change at shorter
02:23:26 20 intervals, whereas here we were seeing a noticeable change
21 in a relatively short time period.

22 Q. And did you also review MRI scans of the defendant's
23 brain?

24 A. I did.

02:23:46 25 Q. And did you compare those scans?

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1 **A.** I did.

2 **Q.** Okay. And what's the significance of comparing scans
3 of the same brain?

02:24:03

4 **A.** So, it -- we longitudinally follow MRI scans in our
5 patients routinely, and it's an important finding to see
6 progression of brain volume loss as the disease advances.

7 **Q.** And -- and what did you observe with respect to the
8 longitudinal review of Mr. Brockman's brain?

02:24:34

9 **A.** So, comparing the scan from 2018 and the scan done in
10 July of this year, there was clear progression of brain
11 shrinkage.

12 **Q.** And what's the significance -- what is brain
13 shrinkage? What causes --

02:24:50

14 **A.** It's just a volume loss of different parts of the
15 brain, and the -- the volume loss in the -- 2021, the
16 current year MRI scan, was reflected in the qualitative
17 assessment that the radiologist, Dr. Fisher, gave in his
18 report of generalized moderate cerebral atrophy with
19 associated ventricular enlargement.

02:25:21

20 So that the qualitative look at the whole
21 brain by the radiologist gave the impression of moderate
22 atrophy. And having moderate atrophy is not a good thing.

23 **Q.** And you talked about the qualitative analysis. Is
24 there another type of analysis that's performed on MRI
25 scans?

02:25:46

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1 **A.** Certainly. Volumetric quantitation is often done,
2 and that's certainly something that we do routinely in our
3 patients as well.

02:26:07

4 **Q.** And -- and the quantitative analysis, could you help
5 us understand the level of precision with respect to the
6 quantitative analysis?

02:26:31

7 **A.** So, although the volumetric analysis is done, we
8 certainly use that information, but there is a degree of
9 variability in those generated numbers, dependent on
10 methodologies, various artifacts, so that the -- and
11 person-to-person variation. So we typically have greatest
12 value to the change over time in a given patient's MRI
13 scans.

14 **Q.** All right.

02:26:56

15 **A.** As opposed to the absolute numbers.

16 THE COURT: Okay. I wanted to ask a quick
17 question while we're at it.

18 THE WITNESS: Sure.

02:27:05

19 THE COURT: So the volume of Mr. Brockman's
20 brain in 2021, are you saying that it's not normal for
21 someone of his age?

22 THE WITNESS: That is my impression. That's
23 correct.

02:27:18

24 MR. LOONAM: And is -- can I follow up on that,
25 Your Honor?

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1 THE COURT: Oh, yes, you may follow up.

2 BY MR. LOONAM:

3 Q. And that is from the qualitative analysis?

4 A. Yes.

02:27:22 5 Q. All right. And the quantitative analysis, are you
6 familiar with, like, a Neuroreader report?

7 A. Yes. Yeah.

8 Q. And what is a Neuroreader report?

02:27:34 9 A. So, it's a -- one method of analyzing the -- the
10 volumetric aspects of different regions of the brain, and
11 it's one of the commonly used methods.

12 Q. And do you think it's a very precise method, or is
13 it -- well, you need to tell me, is it a precise method?

02:27:57 14 A. It's -- it's something that we -- we use the
15 information from, but it's not so reliable because the --
16 the reliability from scan to scan is -- is not great.

17 So -- again, it's a useful piece of
18 information, but it's not anything that we put great
19 weight on.

02:28:21 20 It's something that -- PET imaging is
21 certainly much more specific in terms of FDG PET or the
22 specific Ligand PETs for -- for amyloid. We give that
23 much greater weight.

02:28:42 24 Q. And so -- and let's go -- and let's stick with the
25 structure and we will go back -- we will go back to the

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02:29:05

1 FDG PETs and the amyloid PET, but with respect to the
2 structural analysis, the volumetric and the -- of the --
3 of the MRI scans, in your view is it more useful to
4 conduct the longitudinal analysis of the -- of a patient's
5 brain, or the Neuroreader comparison of a brain to sort of
6 a control population?

02:29:28

7 **A.** So, I mean, we -- we use both pieces of information,
8 but really comparing in a given patient what the rate of
9 change -- how much change there is over time, is -- is the
10 most important aspect of the -- of the assessment.

02:30:04

11 And also with volumetric changes in the
12 setting of Alzheimer's disease and other neurodegenerative
13 disorders, there is some variation in that -- the
14 distribution of the atrophy varies across the population.

15 **Q.** And you said earlier there was one scan, the more
16 recent scan, the neuroradiologist reading the scan noted
17 moderate atrophy, is that --

18 **A.** Correct.

19 **Q.** And so why is that not good?

02:30:15

20 **A.** So, to -- to have a visual impression of moderate
21 atrophy, that's a significant finding which often goes
22 along with dementia. Typically, it would be associated
23 with cognitive dysfunction.

02:30:43

24 **Q.** And -- referring to atrophy, what are we actually
25 seeing? What's happening in the brain that's leading to

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1 the different pictures on the scan?

2 **A.** So, it's shrinkage of the brain with compensatory
3 enlargement of the ventricular side, which also the
4 radiologist mentioned in his global impression.

02:31:12

5 **Q.** All right. You had testified that you gave greater
6 weight to the FDG PET scans --

7 **A.** Correct.

8 **Q.** -- and those images?

9 Help us understand why.

02:31:22

10 **A.** The PET imaging is looking at the function of the
11 brain. So that's the -- the critical thing which
12 correlates with cognitive dysfunction the best.

13 There is -- with all of the
14 neurodegenerative disorders, although there is typically
15 progressive loss in brain volume, that is variable from
16 patient to patient as to how much brain volume loss
17 occurs.

02:31:50

18 And as a neuropathologist, the reason for
19 that is the brain volume is made up of neurons and glia,
20 and in these neurodegenerative processes you're losing
21 neurons, but glia make up half the volume of the brain.
22 And with these processes, there's a variable glial
23 inflammatory response.

02:32:09

24 So in some patients there's a -- more
25 gliosis and the glia multiplies, so then the net effect,

02:32:32

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02:33:01

1 even with neuronal loss, is that there is not that much
2 volume loss, so that these processes vary from patient to
3 patient. But the -- the fluorodeoxyglucose PET tracks
4 more with the actual dysfunction, and is a more critical
5 measure.

6 Q. And --

7 THE COURT: Let me -- I just wanted to ask a
8 few more questions. And you can follow up.

9 MR. LOONAM: Yes, sir.

02:33:08

10 THE COURT: But with respect to the volume loss
11 in 2021, how did that compare to the volume loss you saw in
12 earlier MRIs?

13 THE WITNESS: So, the comparison of the volume
14 loss was really between the 2021 scans and the 2018 scan.

02:33:30

15 THE COURT: Okay. So there was no scan done
16 between 2018 and 2021? 2021 was the first scan?

17 THE WITNESS: Well, 2018 was the first scan.

18 THE COURT: First scan, correct. Then there
19 wasn't another one until 2021?

02:33:45

20 THE WITNESS: Correct. Yeah.

21 THE COURT: And you can follow up if you want,
22 or if you don't, I just need it for my --

23 MR. LOONAM: Your Honor, I am -- anytime.

24 So -- and I have had the benefit of having

02:34:03

25 Dr. Wisniewski on the phone in advance of this hearing and

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1 so it took a couple phone calls for me to understand it.

2 THE COURT: I am working on it.

3 MR. LOONAM: Yeah, I -- me, too. And I am not
4 going to try and pronounce what he just said. So --

02:34:15

5 BY MR. LOONAM:

6 Q. Okay. And then the -- the FDG PET -- so the MRIs are
7 showing brain shrinkage which is -- is useful, but there
8 are --

02:34:37

9 MR. LOONAM: And I apologize for leading and
10 I'll stop.

11 MR. MAGNANI: No, leading is fine.

12 BY MR. LOONAM:

13 Q. But there are other processes going on that may make
14 it difficult to see the level of impairment with an MRI?

02:34:54

15 A. Correct.

16 Q. Okay. Now -- so help us -- now, you told us how
17 the -- the FDG works with respect to, you know, showing
18 how sugar or glucose isn't being taken in, but what does
19 that mean?

02:35:07

20 What's going on with those cells that are
21 showing up on the FDG PET?

22 A. So, it's dysfunction. They're either -- it's
23 reflecting actual neuronal loss, so that the neurons

02:35:28

24 aren't there to be using the glucose, or the neurons are
25 still there, but they're not functioning properly because

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1 of the presence of the plaques and tangles.

2 **Q.** Okay. And so -- what is that -- how does that
3 translate into Mr. Brockman's presentation?

4 **A.** So, it's consistent with him having a dementia, the
5 Fluorodeoxyglucose PET findings, they -- in this
6 distribution that matches to Alzheimer's disease correlate
7 the best with neurofibrillary tangle pathology.

8 The FDG PET findings don't correlate
9 particularly well with amyloid plaques. So the -- so the
10 relevance here in particular is that we have the amyloid
11 PET results, which clearly shows that there is moderate to
12 frequent amyloid plaques, and then the fluorodeoxyglucose
13 PET findings clearly are abnormal and go with an
14 Alzheimer's disease distribution, and they indicate that
15 there is substantial neurofibrillary tangle pathology, so
16 the combination of the two would correlate with the
17 presence of significant dementia.

18 **Q.** And so let's -- let's break that down. So we have
19 talked about the MRI. We have talked about the FDG, and
20 you just talked about the amyloid plaque scan. First,
21 what are amyloid plaques?

22 **A.** So they are the accumulations of an amyloid beta
23 protein in the extracellular space of the brain, and these
24 accumulations are somewhat toxic to neurons.

25 And they, over time, trigger tau-related

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1 pathology. So they trigger the normal protein tau to
2 become hyperphosphorylated, so chemically extra phosphates
3 are added to the tau and that makes the protein tend to
4 aggregate and ultimately it forms neurofibrillary tangles.

02:38:05

5 And then the neurofibrillary tangles are
6 highly toxic to neurons and they cause neuronal
7 dysfunction and death. And the tangle burden correlates
8 the best with neurofib -- with cognitive dysfunction.

02:38:31

9 **Q.** And so -- and did Mr. Brockman have an amyloid PET
10 scan in this case?

11 **A.** He did.

12 **Q.** And what was the result of that PET scan?

13 **A.** So, it was clearly positive and was read as moderate
14 to frequent neuritic plaque presence.

02:38:45

15 **Q.** Okay. And what's the significance of that?

16 **A.** So, it's a clearly positive scan indicating extensive
17 plaque pathology.

02:39:04

18 **Q.** And when you combine the -- the amyloid plaque scan
19 with the FDG PET scan, and you review those in conjunction
20 with one another, what's the significance of that?

21 **A.** So, the combination of the two, a number of published
22 studies have indicated that there's near 100
23 percent specificity for extensive high levels of
24 Alzheimer's pathology, which is associated with
02:39:26 25 significant dementia.

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1 Q. And so the -- the amyloid Scan by itself, can you
2 have a positive amyloid Scan, and -- and have no cognitive
3 problems?

4 A. Absolutely.

02:39:44

5 Q. And you could have a positive amyloid Scan for how
6 long?

7 A. It can be many years. There's quite a long
8 preclinical period where there is plenty of amyloid and
9 there isn't any associated observable cognitive

02:40:03

10 dysfunction, but over time that amyloid triggers the tau
11 pathology and when you have enough of the tau pathology,
12 that's when you have the dementia.

13 Q. And so do we have any idea how long Mr. Brockman's
14 brain has been accumulating these beta amyloid plaques?

02:40:27

15 A. More likely something on the order of 15, 20 years.

16 Q. And so that data point is -- is the amyloid plaque
17 positive study, just correlates with Alzheimer's
18 pathology, correct?

19 A. Correct. Correct.

02:40:46

20 Q. But then when combined with the FDG PET scan and
21 hypometabolism?

22 A. It goes with Alzheimer's disease.

23 Q. And in looking at the hypometabolism that you've
24 observed, did you -- was that part of your analysis that
25 leads to your opinion that Mr. Brockman's currently

02:41:04

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1 suffering from a moderate dementia?

2 **A.** Correct. The findings were certainly consistent with
3 that.

02:41:27

4 **Q.** And with the moderate dementia, do you have an
5 opinion as to whether Mr. Brockman could -- could
6 communicate effectively with counsel in this case?

7 **A.** I -- with his level of impairment, no.

8 **Q.** And why is that?

02:41:52

9 **A.** Because of the degree of cognitive impairment at this
10 stage, that he -- I -- it's certainly my opinion that he
11 would not be able to effectively communicate.

12 **Q.** Let's walk through the domains. How might his memory
13 affect his ability to communicate?

14 **A.** So it would be inaccurate and unreliable.

02:42:11

15 **Q.** And another domain is executive function?

16 **A.** Correct.

17 **Q.** And how would his executive function impairment
18 affect his ability to communicate?

02:42:31

19 **A.** Again, I don't think he would be able to make any
20 sound decisions.

21 **Q.** In your interactions with Mr. Brockman, did you
22 observe anything -- well, what is confabulation?

23 **A.** So, it's the making up of facts to try to overcome
24 memory deficits.

02:42:59

25 **Q.** And did you observe any confabulation with respect to

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1 Mr. Brockman?

2 **A.** Yes. He gave inaccurate timings of when he, for
3 example, moved to his new residence; and it was clear he
4 was mistaken about these facts.

02:43:21 5 **Q.** Now, are you aware that Mr. Brockman gave depositions
6 back in 2019?

7 **A.** Right.

8 **Q.** Did you review, you know, videos of those
9 depositions?

02:43:34 10 **A.** I did.

11 **Q.** And do you -- are you aware he gave speeches when he
12 was at Reynolds and Reynolds when he was CEO there?

13 **A.** Yes.

14 **Q.** Did you review videos of --

02:43:45 15 **A.** I saw them.

16 **Q.** And so -- and are you aware that Mr. Brockman had
17 tested for, you know, mild to moderate dementia, you know,
18 short -- within months of -- of the January deposition
19 video?

02:44:06 20 **A.** Yes.

21 **Q.** Okay. Was there anything inconsistent with
22 Mr. Brockman's presentation in that January video with the
23 possibility that he was suffering a mild dementia?

24 **A.** No. It was entirely consistent.

02:44:26 25 **Q.** And why?

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02:44:53

1 **A.** So, highly learned information can be quite preserved
2 even in the settings of dementia. So, when people are
3 speaking about things which were a core part of their
4 life, they can seemingly look normal, because that
5 particular information was so important to them it's --
6 it's stored in a redundant fashion within the brain so it
7 can be recalled despite the presence of significant
8 dysfunction. So, to casual observance they can seem
9 normal.

02:45:13

10 **Q.** And when you say it's stored in redundant portions of
11 the brain, help us -- help us understand that. What does
12 that mean?

02:45:29

13 **A.** So, because memory is such a core function of the
14 brain, memory is, in fact, stored in the majority of the
15 brain. So, in the process of pathology, such as
16 Alzheimer's disease, very important core memories are --
17 there's more than one part of the brain that's involved in
18 their storage. So, if there is damage, there is
19 redundancy. The -- the individual can still recall those
20 facts despite the presence of pathology.

02:45:57

21 MR. LOONAM: Your Honor, I don't know if it's a
22 good time for a break.

02:46:10

23 THE COURT: Yes, actually. Let's go ahead and
24 take our break now until 3:00. Then we will push on until
25 5:00.

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1 MR. LOONAM: Yes.

2 THE COURT: We might be able to push on a
3 little later. I have just got to make some phone calls
4 during the lunch -- I mean during this afternoon break.

02:46:17 5 So, plan on 5:00 but possibly a little later.

6 MR. LOONAM: Yes, Your Honor. Thank you.

7 THE CASE MANAGER: All rise.

8 (Proceedings recessed from 2:46 p.m. to 3:11 p.m.)

9 THE CASE MANAGER: All rise.

03:11:14 10 THE COURT: Please be seated, everyone.

11 Unfortunately, Counsel -- we are back on
12 the record -- we are going to have to break today at 5:00.

13 MR. LOONAM: Your Honor, I will -- I am going
14 to streamline my examination here because Dr. Wisniewski
03:11:26 15 needs to get on a flight to New York, and I want to make
16 sure the government has ample time to cross. So, we are
17 going to make that happen.

18 THE COURT: I am not rushing you. I'm just
19 telling you that we just can't go beyond 5:00 today.

03:11:37 20 MR. LOONAM: No. And we appreciate the effort.

21 May I examine the witness?

22 THE COURT: You may continue.

23 BY MR. LOONAM:

24 Q. Dr. Wisniewski, what is delirium?

03:11:45 25 A. It's an impairment of cognition related to some sort

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1 of toxic metabolic insult, and often the level of
2 alertness is affected and cognition is impaired.

03:12:14

3 **Q.** And are you aware of -- of whether or not
4 Mr. Brockman has experienced a recent episode or more of
5 delirium?

6 **A.** Yes. Over the last year he's had three episodes of
7 delirium.

03:12:34

8 **Q.** And the three episodes of delirium -- what, if
9 anything, is the significance of Mr. Brockman's
10 reoccurring episodes of delirium?

11 **A.** So, that is quite significant that he's had so many
12 episodes of delirium over a short period of time.

03:13:03

13 Delirium accelerates dementing processes.
14 So, the trajectory of decline is often greatly advanced,
15 and, in some literature, it can double the rate of
16 cognitive decline. Having multiple episodes over a short
17 period of time, again, would be expected to be associated
18 with an acceleration of the dementing process.

03:13:31

19 It's also associated with an increase in
20 mortality. In the older geriatric population, each
21 episode of delirium is -- it has a mortality and it lowers
22 the life expectancy.

23 **Q.** All right. And what is cognitive reserve?

03:13:57

24 **A.** So it's the ability of the brain to overcome insults.
25 And that is a capability of the brain that declines with

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1 age as neuronal numbers decline with age, but that decline
2 in cognitive reserve is greatly accelerated by
3 neurodegenerative processes.

03:14:24

4 **Q.** And the fact that Mr. Brockman has had reoccurring
5 bouts of delirium in the past year, does that suggest
6 anything to you with respect to his level of cognitive
7 reserve?

03:14:43

8 **A.** It implies very poor cognitive reserve. It's unusual
9 for an individual to have multiple episodes of delirium,
10 and it speaks to the fact that his brain has very limited
11 capability of overcoming metabolic insults or the stress
12 induced by any sort of infection.

13 **Q.** And what -- does delirium, in and of itself, lead to
14 permanent damage in the brain?

03:15:10

15 **A.** It does. The inflammatory processes whereby there's
16 a systemic infection, it releases cytokines. They are
17 chemicals that induce inflammation, generally, that leads
18 to breakdown of the blood-brain barrier, the protective
19 barrier whereby toxins are excluded from the central
20 nervous system. And the cytokines themselves, they
21 accelerate the Alzheimer's-related pathology of the
22 plaques and tangles that -- that these cytokines have
23 access to because of the systemic inflammation.

03:15:42

24 **Q.** And, Dr. Wisniewski, in your clinical practice do you
25 have to take any account of the possibility of -- of

03:16:11

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1 patients malingering?

2 **A.** Certainly.

3 **Q.** Okay. Tell --

4 **A.** Patients can have secondary gain with disability,
03:16:28 5 insurance coverage, and also just seek secondary gain from
6 their family and loved ones that they get extra care. So,
7 there is all sorts of reasons for patients either
8 malingering or exaggerating their deficits.

9 **Q.** Now, are you, you know, an expert in forensic
03:17:01 10 practice?

11 **A.** No.

12 **Q.** In this examination, did you conduct what you
13 consider a clinical exam and review of Mr. Brockman or a
14 forensic review?

03:17:14 15 **A.** So, I -- it was forensic in that I had a greater
16 level of suspicion of potential malingering.

17 **Q.** And what did you conclude with respect to the
18 possibility that Mr. Brockman was malingering?

19 **A.** I thought that that was highly improbable.

03:17:36 20 **Q.** And why?

21 **A.** The consistency of his poor performance with my exam,
22 cross-examiners, and the corroborating neuroimaging
23 objective evidence.

24 THE COURT: One other question, Doctor.

03:17:55 25 Have you ever examined patients where the

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1 alleged secondary gain is imprisonment? That is, unlike a
2 case where the secondary gain is, you know, embarrassment
3 with family or Social Security, have you ever looked at
4 that issue in the criminal context?

03:18:14

5 THE WITNESS: I have. So, although my main
6 position is with NYU, NYU's immediately next to Bellevue
7 Hospital, which is the largest city hospital in New York
8 City, and they have a prison floor.

9 THE COURT: Okay.

03:18:31

10 THE WITNESS: And I have for many years been a
11 consulting neurologist at Bellevue; so, I see patients on
12 the prison floor.

13 THE COURT: Okay. And have you -- And you have
14 seen patients on the prison floor. Have you actually made
15 the determination as to whether or not they are competent
16 or not competent to stand trial in the -- in the criminal
17 setting before?

03:18:48

18 THE WITNESS: So, I have expressed opinions on
19 that in exactly that setting.

03:19:03

20 THE COURT: Okay.

21 MR. LOONAM: But, to be clear, Your Honor, in
22 this case, for purposes of his testimony today, we -- we
23 qualified the expert to provide information on neurology
24 and neuropathology with a focus on cognitive diseases. He
25 is not opining on the ultimate issue, just on

03:19:27

THOMAS WISNIEWSKI, M.D. - DIRECT BY MR. LOONAM

1 Mr. Brockman's capabilities --

2 THE COURT: Okay.

3 MR. LOONAM: -- but has not offered an opinion
4 on the actual ultimate issue.

03:19:34 5 THE COURT: Okay. Great.

6 MR. LOONAM: Okay?

7 And no further questions, Your Honor.

8 THE COURT: Okay. Cross-examination?

9 MR. MAGNANI: Yes, Your Honor.

03:20:29 10 **CROSS-EXAMINATION**

11 BY MR. MAGNANI:

12 Q. Good afternoon, Doctor.

13 A. Good afternoon.

14 Q. You are not an expert in competency. Correct?

03:20:34 15 A. Correct.

16 Q. But would you agree with me that in this particular
17 case the defendant's true level of cognitive impairment is
18 the most relevant factor of his competency?

19 A. That's an assessment that I am making in terms of
03:20:52 20 determining the level of his cognitive impairment.

21 Q. Do you remember my question, sir?

22 A. I am answering it in the best way I -- I -- It's true
23 to my understanding of what you asked me.

24 Q. So, is it the most important -- is the defendant's
03:21:15 25 cognitive function the most important disputed issue, as

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THOMAS WISNIEWSKI, M.D. - CROSS BY MR. MAGNANI

1 you understand it, in this case?

2 MR. LOONAM: Objection.

3 THE COURT: Yes, please. Because I thought you
4 said that he wasn't --

03:21:25

5 MR. LOONAM: He is not.

6 THE COURT: Okay.

7 MR. LOONAM: He is not opining on -- on the
8 ultimate issue of competence, and he's only testifying with
9 respect to Mr. Brockman's capabilities for the Court to

03:21:36

10 consider in making that determination. And he's testified
11 that he is not an expert in the law of -- of competence and
12 legal standards.

13 So, we object on relevance and also
14 foundation.

03:21:51

15 THE COURT: All right. Response?

16 MR. MAGNANI: Your Honor, he's testifying about
17 whether memory impairments -- in other words, cognitive
18 function -- can have an impact on his ability to work with
19 counsel. And, so, really, I'm just asking: Is cognitive
20 function an important issue -- the most important issue in
21 this case?

03:22:05

22 THE COURT: How would he know if it is "the"
23 most important issue?

24 MR. MAGNANI: If he doesn't know, then he
25 doesn't know.

03:22:14

THOMAS WISNIEWSKI, M.D. - CROSS BY MR. MAGNANI

1 THE COURT: I am going to allow it. In fact,
2 I'm going to overrule the objection. I am going to allow
3 that question to be answered, and then we will see where
4 you go from there.

03:22:22

5 BY MR. MAGNANI:

6 Q. So, do you know, Doctor?

7 A. Well, with the level of impairment that I am
8 assessing Mr. Brockman has, I don't think he has that
9 capability. To give another example --

03:22:42

10 Q. Am going to cut you off there. Sorry, Doctor.
11 Please just listen -- Have you testified before?

12 A. Not often. This is perhaps my fourth or fifth time
13 of testifying.

14 Q. So, the answer is "Yes"?

03:22:53

15 A. I have testified before, yes.

16 MR. LOONAM: Objection, Your Honor.

17 THE COURT: Basis?

18 MR. LOONAM: He -- the witness is answering the
19 question; and that was badgering this witness.

03:23:05

20 THE COURT: Okay. Overruled.

21 You can ask the question and get an answer
22 and then ask the next question.

23 BY MR. MAGNANI:

24 Q. Have you testified before?

03:23:12

25 A. Yes.

THOMAS WISNIEWSKI, M.D. - CROSS BY MR. MAGNANI

1 Q. And you have to leave today to get back to New York.
2 Right?

3 A. I do.

03:23:19

4 Q. Okay. And you understand that cross-examination is
5 different than direct examination. Right?

6 A. Yes.

7 Q. Okay. And, so, I am going to try my best to ask
8 short, simple questions, and will you promise to do your
9 best to try to give "Yes" or "No" answers if appropriate?

03:23:29

10 A. Yes.

11 Q. Okay. And also for the benefit of everybody, will
12 you notify us if my question is confusing or can't
13 truthfully be answered that way?

14 A. Yes.

03:23:39

15 Q. Okay. Good. Hopefully, we can work together so we
16 can get you out of here.

17 So, you diagnosed the defendant with
18 moderate dementia. Right?

19 A. Correct.

03:23:49

20 Q. And you testified on direct that you are, quote,
21 fully certain he does not have MCI. Correct?

22 A. Correct.

23 Q. Okay. And, definitionally, dementia just means that
24 your cognitive impairment is affecting your functional

03:24:05

25 independence. Correct?

THOMAS WISNIEWSKI, M.D. - CROSS BY MR. MAGNANI

1 **A.** Correct.

2 **Q.** So, in moderate dementia -- you said that your
3 diagnosis was based on -- and if I misquote you, please
4 correct me -- but based on the defendant being totally
5 dependent on all basic activities of daily living.

03:24:17

6 Correct?

7 **A.** Yes.

8 **Q.** And you said that opinion was based on reporting from
9 his wife. Correct?

03:24:26

10 **A.** Correct.

11 **Q.** And from his caregiver?

12 **A.** Correct.

13 **Q.** And you also said it is based on his performance on
14 cognitive tests. Correct?

03:24:35

15 **A.** Correct.

16 **Q.** Okay. And at the end of your testimony you also
17 talked about malingering. Right?

18 **A.** Correct.

19 **Q.** Okay. Now, you talked a little bit about your
20 criminal experience at Bellevue, but I would just like to
21 ask you: About how many accused criminal defendants have
22 you examined in a competency setting?

03:24:43

23 **A.** Not -- not many.

24 **Q.** Okay. Can you think of the name of any criminal
25 defendants that you have evaluated in a competency

03:25:00

THOMAS WISNIEWSKI, M.D. - CROSS BY MR. MAGNANI

1 setting?

2 **A.** No.

3 **Q.** Okay. So, would it surprise you, though, to learn
4 that criminals being evaluated for their cognitive
5 function in a competency setting have a far higher
6 malingerer rate than patients in a clinic?

7 **A.** No.

8 **Q.** And are you -- would it surprise you if the
9 malingerer rate of criminal defendants who are
10 complaining of memory problems -- that the rate is about
11 50 percent?

12 **A.** It would not surprise me.

13 **Q.** So, malingerer is not your expertise. Fair to say?

14 **A.** I have -- Correct.

15 **Q.** Okay. You're probably more comfortable talking about
16 the imaging stuff; is that right?

17 **A.** I am --

18 **Q.** I'll ask a different question. Are you more -- are
19 you more of an expert in imaging or in malingerer?

20 **A.** I would say the image.

21 **Q.** Okay. And you talked a lot about the different
22 biological changes that happen with people experiencing
23 cognitive decline. Right?

24 **A.** Correct.

25 **Q.** And a lot of those biological changes can be measured

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THOMAS WISNIEWSKI, M.D. - CROSS BY MR. MAGNANI

1 with neuroradiology. Right?

2 **A.** Correct.

3 **Q.** So, I want to talk a little bit about the imaging in
4 this case.

03:26:32

5 And, just to start, would you agree that
6 some diseases can be conclusively diagnosed with
7 neuroradiological images?

8 **A.** Yes.

03:26:47

9 **Q.** And you gave an example of that when you talked about
10 the Parkinson's disease diagnosis and the DaTscan. Right?

11 **A.** Correct.

12 **Q.** So, the DaTscan shows neurodegeneration to the
13 dopamine receptors in the brain that you can rely on to
14 conclusively diagnose Parkinson's disease. Right?

03:27:03

15 **A.** Correct.

16 **Q.** Okay. But would you also agree that the diseases
17 that we are talking about -- Strike that.

18 Not the diseases, but would you agree that
19 the levels of impairment that are at dispute in this case
20 cannot be conclusively diagnosed with neuroradiology
21 alone?

03:27:15

22 **A.** Correct.

23 **Q.** Okay. So, you -- well, you talked a little bit about
24 the difference between qualitative and quantitative

03:27:31

25 review. Do you recall that testimony?

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1 **A.** Yes.

2 **Q.** And please take some time to correct me if I get this
3 wrong, but did you say that in this case, when comparing
4 the -- the MRI from 2018 and 2021, you relied mostly on
5 your qualitative analysis? Right?

03:27:45

6 **A.** Correct.

7 **Q.** So, in other words, for the MRIs, when it comes to
8 comparing them, you didn't put too much -- you put less
9 stock in the Neuroreader than you did your own expert eyes
10 looking at two images?

03:28:00

11 **A.** Correct.

12 **Q.** Okay. And fair to say that there is probably not
13 many people in this courtroom that can appreciate what
14 your eyes can see in neuroimaging?

03:28:13

15 **A.** Perhaps.

16 **Q.** Maybe Mr. Loonam?

17 MR. LOONAM: That's --

18 MR. MAGNANI: Strike that.

19 BY MR. MAGNANI:

03:28:21

20 **Q.** So, do you think you have the ability, however, to
21 show different images and point out to lay witnesses what
22 the types of changes that are being observed in the brain
23 are?

24 **A.** Yes.

03:28:30

25 **Q.** So, you could point out to me, for example, if I have

THOMAS WISNIEWSKI, M.D. - CROSS BY MR. MAGNANI

1 two different images and explain where the changes are
2 being observed. Correct?

3 **A.** Most likely. Yes.

4 **Q.** Okay. Before we do any of that, I want to start by
5 showing you what is in evidence as Defense Exhibit 58.

03:28:45

6 MR. MAGNANI: And just so you guys know, I
7 couldn't figure out how to print it with the exhibit
8 stickers that you sent, so I just --

9 MR. LOONAM: That's fine.

03:28:59

10 THE COURT: Do you need an exhibit sticker?

11 MR. MAGNANI: No. The defense marked them, but
12 electronically, and I don't have the ability -- I couldn't
13 figure out how to print it with the sticker, so I just --

14 THE COURT: Okay.

03:29:11

15 MR. MAGNANI: Can I have the ELMO, please?

16 THE COURT: The only reason I say that: We
17 have got stickers, if that's a problem. We have got plenty
18 of stickers.

19 MR. MAGNANI: Some of my -- zoom out.

03:29:31

20 MR. LANGSTON: Middle button there.

21 MR. MAGNANI: Oh. Okay. Good. Good. Good.
22 All right.

23 BY MR. MAGNANI:

24 **Q.** Can you see the exhibit okay, Doctor?

03:29:36

25 **A.** I can. Yes.

THOMAS WISNIEWSKI, M.D. - CROSS BY MR. MAGNANI

1 Q. Okay.

2 A. Thank you.

3 Q. So, did you prepare this exhibit?

4 A. No.

03:29:40

5 Q. And this exhibit is showing a comparison of the 2018
6 and 2021 Neuroreader reports. Right?

7 A. Uh-huh. Yes.

8 Q. And it only shows three out of five of the areas that
9 the Neuroreader maps out on these graphs, to call them.

03:29:58

10 Right?

11 A. Correct.

12 Q. So, it doesn't show the whole picture. Right?

13 A. Correct.

14 Q. Okay. And, actually, before -- just back to sort of
15 your qualitative analysis, I want to make sure I
16 understand that you -- what you were saying on direct.

03:30:07

17 So, you talked about -- Well, let me ask
18 you this.

19 Would you agree that due to differences in
20 different patients' level of cognitive reserves, you might
21 have two people with different presentations, even though
22 their radiological images look the same?

03:30:22

23 A. Yes.

24 Q. So, just to make that simple in case that was a bad
25 question: So, two people with similar-looking images

03:30:35

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THOMAS WISNIEWSKI, M.D. - CROSS BY MR. MAGNANI

1 could have very different presentation. Right?

2 **A.** Yes.

3 **Q.** And one of the biggest factors to account for the
4 difference in presentation is the cognitive reserve of
5 those people?

03:30:48

6 **A.** Correct.

7 **Q.** And, so, you said that you estimated Mr. Brockman as
8 having a low cognitive reserve. Right?

9 **A.** In a different context, yes.

03:30:58

10 **Q.** Well, in -- do you need to explain?

11 **A.** In the context of --

12 MR. LOONAM: Time frame? Time frame as to when
13 he has a low cognitive reserve.

14 **Q.** Oh. Does it -- Well, how about today? How is his
15 cognitive reserve today?

03:31:12

16 **A.** Poor.

17 **Q.** Okay. How would you describe it in 2019?

18 **A.** I -- that I am not sure.

19 **Q.** Well, let me ask you: Didn't you say on direct that
20 your basis for assessing him as having a low cognitive
21 reserve was in part because of these repeated
22 hospitalizations?

03:31:21

23 **A.** Over 2021.

24 **Q.** Yeah. And specifically --

03:31:31

25 **A.** So, I can't speak to 2018 or '19.

THOMAS WISNIEWSKI, M.D. - CROSS BY MR. MAGNANI

1 Q. Thank you. Let's focus on 2021, and specifically I
2 want to focus your attention between March 2021 -- Do you
3 know if he was hospitalized then?

4 A. Yes.

03:31:43

5 Q. Between then and the present.

6 And, so, in that time period from March
7 2021 to today, Mr. Brockman has been hospitalized quite a
8 few times. Right?

9 A. Correct.

03:31:52

10 Q. And one of the things that was observed during those
11 hospitalizations was delirium. Right?

12 A. Correct.

13 Q. And you talked about delirium as being one of the --
14 well, I think you said, the primary reason you estimate he
15 has a low cognitive reserve.

03:32:04

16 A. His susceptibility to delirium.

17 Q. Okay. And, so, because you estimate Mr. Brockman as
18 having a low cognitive reserve, does that mean, then, that
19 he's one of those people where the imaging doesn't look so
20 bad but the presentation is way worse?

03:32:20

21 A. That's a possibility.

22 Q. I want to -- so, in your first report -- and, by the
23 way, do you -- you don't have it with you, do you?

24 A. No.

03:32:36

25 Q. Let me know if you need it --

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THOMAS WISNIEWSKI, M.D. - CROSS BY MR. MAGNANI

1 **A.** Okay.

2 **Q.** -- or anything else.

3 Okay. But in your first report you
4 wrote -- and I am going to quote it. You don't have to
03:32:45 5 know the quote. Just tell me if I am misrepresenting your
6 opinion.

7 THE COURT: Just a second. Mr. Loonam, do you
8 need something?

9 MR. LOONAM: I want him to go. I don't want to
03:32:54 10 distract him, but I'll give him the report so he has it.

11 MR. MAGNANI: And for the record, this is
12 Defense Exhibit 24.

13 BY MR. MAGNANI:

14 **Q.** And, so, in your report you wrote, quote:

03:33:02 15 "Neuroimaging shows clear degeneration and significant
16 brain shrinkage." Does that sound a little right?

17 **A.** That sounds --

18 **Q.** So, I want to focus on this significant brain
19 shrinkage part.

03:33:16 20 **A.** Okay.

21 **Q.** Now, you're a scientist. Right?

22 **A.** Yes.

23 **Q.** Okay. Does the term "significant" have a different
24 meaning in scientific context than in a lay context?

03:33:27 25 **A.** It can.

THOMAS WISNIEWSKI, M.D. - CROSS BY MR. MAGNANI

1 Q. So, why don't you just clarify it for us? Do you
2 mean a massive shrinkage, like a layperson might say; or
3 do you just mean not likely to be due to chance, like a
4 scientist would say?

03:33:40

5 A. That's the meaning I had, the latter.

6 Q. The latter. So, not a massive change in volumetric
7 loss?

8 A. Correct.

03:33:51

9 Q. Okay. I just wanted to clear that up because
10 sometimes we can get a little confused.

11 So, you -- looking back at Defense Exhibit
12 58, you testified about why you don't put -- Well, can you
13 just explain again why do you put seemingly less stock in
14 quantitative brain MRI analysis than your own qualitative
15 analysis?

03:34:19

16 A. Because the technique that's used in the segmentation
17 and the generation of the data is often subject to
18 artifact. So, there was a lack of reliability of the
19 numbers, even the exact numbers that are generated.

03:34:46

20 It's my experience and that of many
21 clinicians that you can have patients have MRIs that are
22 volumetric in a relatively short period of time, and the
23 numbers are quite different that are generated by the
24 analysis.

03:35:07

25 Q. Okay. So --

THOMAS WISNIEWSKI, M.D. - CROSS BY MR. MAGNANI

1 MR. MAGNANI: And, actually, I think, is there
2 a defense exhibit binder floating around? It might be
3 easier because I am going to refer to -- we can save some
4 time.

03:35:16

5 BY MR. MAGNANI:

6 Q. So, you did, however, review the Neuroreader reports
7 in this case?

8 A. Yes.

03:35:27

9 Q. And the Neuroreader reports are the types of
10 quantitative analysis?

11 A. Yes.

12 Q. So, what I want to do now is direct your attention to
13 Defense Exhibit 8. And what I am going to do, Doctor, is
14 I am just going to bring you this big binder.

03:35:40

15 A. Okay.

16 Q. And there are tabs so you can just flip to the
17 exhibits.

18 MR. MAGNANI: May I approach the witness, Your
19 Honor?

03:35:46

20 THE COURT: You may approach.

21 THE WITNESS: That's a big binder.

22 MR. MAGNANI: It's heavy. And I can also put
23 this up on the screen. I just don't have -- I just don't
24 have a marked version.

03:36:09

25 MR. LOONAM: That's okay.

THOMAS WISNIEWSKI, M.D. - CROSS BY MR. MAGNANI

1 BY MR. MAGNANI:

2 Q. So, now, is this the 2021 Neuroreader report on the
3 screen?

4 A. It is, yeah.

03:36:22

5 Q. And, Doctor, if the screen is easier, it might be
6 better, because that's what everyone else is looking at.

7 A. Ah. Okay.

8 Q. Okay. So -- and in this --

03:36:38

9 MR. LOONAM: Wait. Wait. I think you have the
10 wrong -- that's it's a different -- that's Exhibit 44 that
11 you have on the screen, I think.

12 MR. MAGNANI: Okay. Well, exhibits or no
13 exhibits, do you mind if I show the witness this, if he
14 recognizes --

03:36:49

15 MR. LOONAM: It may be on the wrong page.

16 MR. MAGNANI: Well, I am on the page on the
17 ELMO.

18 MR. LOONAM: But he may have -- I'm sorry.

19 BY MR. MAGNANI:

03:36:55

20 Q. Let's try working with the screen, Doctor.

21 A. Sure. Sure.

22 Q. If you need to change, though, just let us know.

23 Okay. So, in this 2021 Neuroreader
24 report, the quantitative analysis puts the defendant's
25 brain volume in the 34.18 percentile.

03:37:13

THOMAS WISNIEWSKI, M.D. - CROSS BY MR. MAGNANI

1 **A.** Yes.

2 **Q.** Is that right?

3 **A.** Yeah.

03:37:30

4 **Q.** And the -- and you mentioned, from your qualitative
5 view, that you said you saw damage in the parietal and
6 temporal lobes; is that right?

7 **A.** That's based on the FDG PET.

03:37:47

8 **Q.** Oh. Okay. But -- well, let me ask you this. If you
9 have neurodegeneration that is causing FDG PET findings,
10 would you expect that to cause volumetric loss over time?

11 **A.** Not necessarily.

12 **Q.** So, let's not get confusing, then.

13 So, the parietal and temporal lobes, those
14 are both associated with memory. Right?

03:38:01

15 **A.** Correct.

16 **Q.** But isn't the most important piece of the brain that
17 has to do with memory actually the hippocampus?

18 **A.** No.

03:38:11

19 **Q.** Well, would you agree that the hippocampus is where
20 we see amyloid and tau plaques cluster in the brain in
21 patients with Alzheimer's?

22 **A.** No.

03:38:24

23 **Q.** So, your testimony is that, in patients with
24 Alzheimer's, amyloid and tau plaques do not cluster in the
25 hippocampus?

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THOMAS WISNIEWSKI, M.D. - CROSS BY MR. MAGNANI

1 **A.** So, to explain, the hippocampus doesn't typically
2 have a lot of amyloid pathology. It has a lot of tau
3 pathology. So, it -- it wouldn't be accurate to say that
4 both pathologies cluster there.

03:38:43

5 **Q.** Okay. So, let's break that down.

6 So, you testified before that someone
7 could have quite a lot of amyloid in their brain without
8 any cognitive decline. Right?

9 **A.** Yes.

03:38:52

10 **Q.** But it's a little different with tau. Right?

11 **A.** Correct.

12 **Q.** Once tau starts accumulating in your brain you are
13 going to have problems. Right?

14 **A.** Correct.

03:39:02

15 **Q.** Okay. And the time course of these things is
16 pretty -- I mean, you described it on your testimony, but
17 it's, basically, amyloid accumulates for years?

18 **A.** Correct.

19 **Q.** And then tau? You have to answer --

03:39:15

20 **A.** Correct. Yes.

21 **Q.** And then we start to see neurodegeneration from that?

22 **A.** Correct.

23 **Q.** And then we start to see cognitive decline?

24 **A.** Correct.

03:39:22

25 **Q.** Okay. And I am going to show -- and I'm just going

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THOMAS WISNIEWSKI, M.D. - CROSS BY MR. MAGNANI

1 to say this as the Darby Slide No. 2.

2 Now, have you seen this specific image
3 before, Doctor?

4 **A.** Yes.

03:39:42

5 **Q.** Okay. Is this a fair and accurate depiction of the
6 course of these different biological changes in people
7 with dementia?

8 **A.** That's unknown.

03:39:56

9 **Q.** Well, is this consistent with what you just said;
10 amyloid first, then tau, then neurodegeneration, then
11 cognitive decline?

12 **A.** So, it's a bone of significant contention as to how
13 quick the neurodegeneration follows the tau pathology.

03:40:15

14 **Q.** Right. But, I mean, this is an X and Y axis that
15 don't have -- Well, let's talk about quantitative and
16 qualitative again.

17 So, this is not some sort of, you know,
18 to-scale measurement. Right?

19 **A.** No.

03:40:24

20 **Q.** But is it demonstrating a concept, maybe, that isn't
21 so easy to understand?

22 **A.** It is. But it's very approximate.

23 **Q.** So -- but do you think it's misleading?

24 **A.** Yes.

03:40:36

25 **Q.** Okay. Are there images like this that you think are

THOMAS WISNIEWSKI, M.D. - CROSS BY MR. MAGNANI

1 accurate that you can cite -- I am, really, just trying to
2 be helpful. So --

03:40:57

3 **A.** I -- so, that -- the exact timelines of these
4 trajectories in dementia progression is the subject of
5 current research. The exact trajectories are unknown and,
6 also, they likely somewhat vary from patient to patient.

7 **Q.** Okay. Well, if you don't think this is accurate, I
8 want to take it off the screen.

9 Let's go back to the Neuroreader.

03:41:17

10 So, the Neuroreader report has that
11 overall percentile that we talked about before. Right?

12 **A.** Yes.

13 **Q.** It also gives the percentile of different areas of
14 the brain. Right?

03:41:27

15 **A.** Correct.

16 **Q.** And tell me if you need me to hand this to you or
17 something, but Mr. Brockman's hippocampus is in the 43.8
18 percentile?

19 **A.** Uh-huh.

03:41:40

20 **Q.** Okay. So, that means that in a -- in a village with
21 1,000 eighty-year-olds, Mr. Brockman's hippocampus is
22 going to be bigger than 438 of them?

23 **A.** As -- as a normal distribution, yes.

03:42:06

24 **Q.** And his overall brain size will be bigger than 342 of
25 them?

THOMAS WISNIEWSKI, M.D. - CROSS BY MR. MAGNANI

1 **A.** Approximately. Yeah.

2 **Q.** Now, this village of people -- every one there is
3 cognitively normal. Right?

4 **A.** I don't know.

03:42:18

5 **Q.** Yeah. Sorry. That's a confusing question. Let me
6 ask it this way.

7 These percentiles compare
8 eighty-year-olds to eighty-years-olds who -- Sorry.
9 Strike that.

03:42:26

10 The Neuroreader is comparing the patient
11 whose scan we are looking at to people of their same age
12 that are cognitively normal?

13 **A.** Correct.

03:42:57

14 **Q.** Okay. And so let me ask you this: If you only had
15 the quantitative analysis to go by, wouldn't it be
16 undisputed that Mr. Brockman's MRI is normal?

17 **MR. LOONAM:** Objection.

18 **THE COURT:** What is the basis for the
19 objection?

03:43:07

20 **MR. LOONAM:** I mean, it's -- if he only had
21 this quantitative analysis that he said is unreliable
22 available?

23 **THE COURT:** Well, objection overruled. He is
24 an expert. This is his field. I need to hear what he has
25 to say.

03:43:18

THOMAS WISNIEWSKI, M.D. - CROSS BY MR. MAGNANI

1 MR. LOONAM: Sure.

2 THE COURT: So, you can ask the question.

3 BY MR. MAGNANI:

4 Q. Do you remember the question?

03:43:22

5 A. Yes, I do. And I would say you can't judge the
6 normalcy of the MRI based on the numbers.

7 Q. Okay. And, so, is it your opinion that the
8 qualitative analysis is more important than the
9 quantitative?

03:43:40

10 A. Yes.

11 Q. Now, is there a particular -- You talked about
12 reasons why you cannot compare the 2018 quantitative
13 analysis with the 2021 quantitative analysis. Do you
14 remember that?

03:44:03

15 A. Yes.

16 Q. And is that basically because they were used -- they
17 were created using different MRI hardware?

18 A. That's one reason. The other is the slice thickness
19 of the 2018 was thicker. So, the 1.5 millimeter thickness
20 introduces complications for the Neuroreader quantitation
21 such that they are unreliable and, also, makes it really
22 impossible to compare the percentages from 2018 to 2021.

03:44:29

23 Q. Okay. That's very helpful. But I did a little
24 studying, too.

03:44:49

25 So, the 2018 is a 1.5 millimeter slice,

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1 you said. Right?

2 **A.** About -- yeah, 1.5. Yeah.

3 **Q.** And the 2021 is a 1.2 millimeter slice?

4 **A.** Correct.

03:45:00

5 **Q.** And the 2021 was specifically configured for
6 Neuroreader software. Right?

7 **A.** Correct.

8 **Q.** So, these things combined explain why we can't just
9 take the numbers from the 2018 quantitative analysis and

03:45:13

10 compare them to the 2021 --

11 **A.** That's true.

12 **Q.** -- quantitative?

13 Okay. So, just back to Defense Exhibit
14 58, could you see, Doctor, why something like this might
15 mislead a layperson who doesn't understand all that?

03:45:25

16 **A.** Yes.

17 **Q.** Okay. Now, in comparing the quantitative analysis of
18 the 2018 and the 2021 Neuroreader, if you compare the
19 numbers, there are things that just don't make any sense.

03:45:44

20 Right?

21 **A.** Correct.

22 **Q.** So, Mr. Brockman's gray matter percentile is higher
23 in 2021 than 2018; isn't that right?

24 **A.** It is.

03:45:54

25 **Q.** You don't think his gray matter actually increased in

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1 that time. Right?

2 **A.** No.

3 **Q.** And gray matter is where processing happens?

4 **A.** Correct.

03:46:03

5 **Q.** Have you reviewed the other expert opinions in this
6 case that have opined on the neuroimaging studies
7 available?

8 **A.** I believe so, yes.

03:46:24

9 **Q.** And is it your understanding that they all agree that
10 the amyloid is positive?

11 **A.** Yes.

12 **Q.** Did you say something though today about how the
13 amyloid is like super positive?

03:46:39

14 **A.** So I was quoting the reading of the amyloid Scan of
15 moderate to frequent plaques, which is what was in the
16 report.

03:46:58

17 **Q.** Okay. And so I believe on the basis of that you said
18 something like the amyloid has been accumulating in
19 Mr. Brockman's brain for longer than common, before you
20 would see tau, right?

21 **A.** So, it was a guess, but that's based on studies of
22 the average duration of amyloid accumulation.

23 **Q.** Okay. So -- and amyloid PET is not really a good
24 diagnostic tool for neurodegeneration, right?

03:47:22

25 **A.** Correct.

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1 Q. It is not a good diagnostic tool of cognitive
2 function, right?

3 A. Correct.

03:47:35

4 Q. So, did you -- did you -- do you know why the amyloid
5 PET was done in this case?

6 A. To -- I -- I -- no.

7 Q. Okay. So, you didn't talk to any of the other
8 members of The Forensic Panel team about ordering an
9 amyloid PET?

03:47:49

10 A. It was discussed.

11 Q. Okay. And, I mean, why did you guys decide to order
12 it?

13 A. So a -- the presence of the amyloid is something
14 that's required for the diagnosis of Alzheimer's disease.

03:48:06

15 So, it was discussed that it -- getting the scan would
16 allow the assessment of whether Alzheimer's disease is
17 present or not.

18 Q. But would you agree with me that whether or not the
19 Defendant has Alzheimer's disease, is less important than
20 the degree of neurodegeneration in his brain?

03:48:26

21 A. Correct.

22 Q. So -- and that's why the FDG PET is a better measure
23 of neurodegeneration than the amyloid PET?

24 A. That's correct.

03:48:39

25 Q. But you guys ordered the amyloid PET and not an FDG

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1 PET, right?

2 MR. LOONAM: Objection, Your Honor, this is --
3 there needs to be a foundation. This is misleading. I
4 mean this --

03:48:52

5 MR. MAGNANI: What --

6 MR. LOONAM: It was in response to this
7 which -- come here, this isn't --

8 (Counsel confer off the record.)

03:49:11

9 MR. MAGNANI: You can object. I don't think
10 that's reasonable.

11 THE COURT: Hold on, I mean, here is the deal,
12 these are experts, they are not fact witnesses, so they
13 know what they did and they didn't do, and what studies
14 were and were not done. So, I am going to let you ask
15 whatever questions you need to ask them.

03:49:23

16 BY MR. MAGNANI:

17 Q. Okay. So, can you answer the question?

18 A. Okay.

19 Q. Sorry, here, I'll reframe again.

03:49:31

20 So you filed your expert report in August,
21 right?

22 A. Correct.

23 Q. And before August you ordered -- the amyloid PET was
24 done in late July, right?

03:49:39

25 A. Right.

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THOMAS WISNIEWSKI, M.D. - CROSS BY MR. MAGNANI

1 Q. And you guys talked about ordering that amyloid PET,
2 right?

3 A. Correct.

4 Q. And decided to order it?

03:49:46

5 A. Correct.

6 Q. After you filed your reports, Dr. Darby recommended
7 doing another FDG PET, correct?

8 A. Correct.

03:49:58

9 Q. Okay. And you agreed with me already, I think, that
10 the FDG PET is a better measure of neurodegeneration than
11 the amyloid PET?

12 A. Correct.

13 Q. The amyloid PET is informative about Alzheimer's
14 disease, but tells us very little about dementia, correct?

03:50:09

15 A. Correct.

16 Q. So, did you guys talk about ordering a tau PET?

17 A. No.

18 Q. It never came up, thinking about a tau PET?

19 A. It was mentioned.

03:50:23

20 Q. But you decided not to order one?

21 A. That wasn't a decision I made.

22 Q. Okay. But you did say it was mentioned, right?

23 A. Yes.

03:50:33

24 Q. And so I assume you heard it being mentioned because
25 you were some part of this decisionmaking process?

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1 **A.** Yes.

2 **Q.** Would you agree that a tau PET would be a better tool
3 to diagnose Alzheimer's disease than an amyloid PET?

4 **A.** Yes.

03:50:48

5 **Q.** Okay. But you weren't able to convince your
6 colleagues to order the tau PET?

7 **A.** That's not the case.

8 **Q.** So, just please explain because --

03:51:04

9 **A.** Because the FDG PET is a good measure and it's the
10 standard measure of neurodegeneration. So, therefore, a
11 tau PET was unnecessary.

12 **Q.** And so just to be clear, there is an FDG PET in
13 March, right?

14 **A.** Yes.

03:51:17

15 **Q.** And Dr. Ryan Darby ordered that report?

16 **A.** Correct.

17 **Q.** And there was another FDG PET in August, right?

18 **A.** Correct.

03:51:27

19 **Q.** And the person's name on the radiologist report says
20 Dr. Welner, right?

21 **A.** Correct.

22 **Q.** But it was Ryan Darby who ordered that test, right?

23 **A.** I don't know.

03:51:35

24 **Q.** Well, let me ask you this: The test was ordered
25 after you filed your expert report, right?

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1 **A.** Yes.

2 **Q.** And was that test requested by the government?

3 **A.** I don't know.

4 **Q.** Okay. But -- and just back to the question about the
03:51:47 5 decision to order an amyloid PET instead of a tau PET, you
6 did testify that you discussed both before filing your
7 expert report, right?

8 **A.** It -- no.

9 **Q.** You did not discuss --

03:52:02 10 **A.** So, we -- we specifically discussed the amyloid PET
11 at that time.

12 **Q.** And maybe I mis -- I thought you testified that you
13 did raise the possibility of ordering a tau PET?

14 **A.** That was after the amyloid PET was done.

03:52:23 15 **Q.** Was it before or after your expert reports -- well,
16 let me ask you this: To the best of your memory, when did
17 the experts on The Forensic Panel start talking about
18 ordering a tau PET?

19 **A.** It -- I actually don't recall.

03:52:39 20 **Q.** But do you have any certainty about whether it was
21 before or after the expert reports?

22 **A.** I believe it was after.

23 **Q.** Well, let me ask you this: Before the reports were
24 due, did -- you talked -- you already testified you talked
03:52:53 25 about ordering the amyloid PET, right?

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1 **A.** Yes, but to give some context, the original expert
2 report that I filed was a dictation by myself from the
3 Surgical I.C.U.

4 **Q.** I don't understand. What --

03:53:15

5 **A.** So, I was undergoing an aortic valve replacement, so
6 I was in the Surgical I.C.U., so my exact memory of that
7 time is a little hazy.

8 **Q.** And not to get too into the details of your personal
9 life, but do you remember when you were in the I.C.U.?

03:53:34

10 **A.** At the time that the original report was filed, I
11 dictated it.

12 **Q.** Okay. But what I am wondering, so the amyloid PET
13 was ordered over a week before the reports were filed,
14 right?

03:53:49

15 **A.** It -- okay.

16 **Q.** Well, if you don't know, just say you don't know.

17 **A.** I'm not sure.

18 **Q.** The reports were filed in -- well, do you have your
19 report? Or I can look at it. Does August 6 sound right?

03:54:05

20 **A.** Yes. Yeah.

21 **Q.** And the amyloid PET was complete in July, right?

22 **A.** Okay.

23 **Q.** Is that right?

24 **A.** Yes.

03:54:16

25 **Q.** So, you obviously decided to order it before July?

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1 **A.** Yes.

2 **Q.** And so what I am wondering is, were you a part of
3 that decision-making process or not?

4 **A.** For ordering the amyloid test, yes.

03:54:28

5 **Q.** Okay. So, you do remember talking with other members
6 of The Forensic Panel about ordering the amyloid?

7 **A.** Yes.

8 **Q.** And in that conversation did anyone bring up ordering
9 a tau PET?

03:54:38

10 **A.** At that time, no.

11 **Q.** But do you think maybe it should have been brought
12 up?

13 **A.** No.

03:54:48

14 **Q.** Doctor, didn't you testify before -- didn't you agree
15 with me that a tau PET would be a better indicator of
16 Alzheimer's disease than an amyloid PET?

17 **A.** But an amyloid and an FDG PET is --

18 **Q.** Doctor, sorry, I am not talking about FDG PETs.

19 **A.** Okay.

03:55:03

20 **Q.** I am only talking about amyloid PET versus tau test.

21 MR. LOONAM: Objection, Your Honor, he was
22 answering the question and was interrupted. He should be
23 able to complete his answer and he would have been able to
24 answer the question.

03:55:14

25 THE COURT: You can.

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1 THE WITNESS: So, let me rephrase. The tau PET
2 is only a better indication of the degree of Alzheimer's
3 pathology in the setting of a positive amyloid scan.

4 BY MR. MAGNANI:

03:55:35

5 Q. Sorry, I -- but are --

6 A. So, to clarify, it's possible to have a positive tau
7 scan and then a negative amyloid scan, and then you don't
8 have Alzheimer's disease. And those diseases are separate
9 from Alzheimer's and have a different prognosis.

03:56:01

10 Q. An FDG PET can reveal findings that are relevant in
11 PDD --

12 A. So a positive FDG PET in the setting of a negative
13 amyloid scan, and a positive tau scan has a different
14 significance than a positive FDG PET and a positive
15 amyloid PET.

03:56:27

16 Q. So, I want to talk about comparing the FDG PETs that
17 were done in this case. So, please tell -- step on me
18 here if I get this wrong, but when you look at those
19 images, it looks like a gray brain with some blue
20 scattered on it?

03:56:46

21 A. Yeah. Yes.

22 Q. And the blue is not brain activity, right?

23 A. It's sub func -- dysfunctional areas.

24 Q. Right. It's the bad stuff?

03:56:59

25 A. Yes. Yes.

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03:57:14

1 Q. And even though you have a -- obviously a more
2 trained eye, would you agree with me that, you know, a
3 layperson can look at those two PETs and tell that the
4 neurodegeneration has gotten worse in Mr. Brockman between
5 March and August?

6 A. Yes.

03:57:26

7 Q. Okay. But would you also agree with me -- well, let
8 me ask you this: Would you agree with Dr. Whitlow when
9 he -- when he says that comparison of the PETs suggest
10 that, "It may have progressed slightly"?

11 A. It has progressed.

12 Q. It's definitely progressed, right?

13 A. Yes.

03:57:38

14 Q. And whatever he said in his report, it's clear to a
15 layperson that there has been progression, right?

16 A. Yes.

17 Q. Okay. So, do you appreciate that a layperson even
18 can see the differences in some of these scans?

19 A. Yes.

03:57:47

20 Q. Now, when you look at the MRIs, you said it is
21 consistent what you're used to seeing in dementia?

22 A. The --

23 Q. Sorry, you're right. That's a confusing question.

03:58:02

24 You said that your diagnosis of moderate
25 dementia is supported by the neuroradiology in this case?

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1 **A.** Yes.

2 **Q.** Okay. But you said that it's not supported by a
3 quantitative analysis of that neuroradiology, right?

4 **A.** Correct.

03:58:12

5 **Q.** It is based on your qualitative assessment of those
6 images, right?

7 **A.** For the volumetric it is qualitative, but the
8 assessment is the difference between the 2018 to the '21
9 scan. So, I wouldn't have made such a strong statement by
10 just looking at the 2021 scan.

03:58:34

11 **Q.** Well, your strong statement was about -- well, never
12 mind. So, I just want to focus on the FDG PETs now.

13 **A.** Yes.

03:58:48

14 **Q.** So, when you look at the FDG PETs, unlike me, you
15 have a sense in the back of your mind of what a typical
16 dementia patient's FDG PET looks like?

17 **A.** Yes.

18 **Q.** And if I had that, I might do a better job at
19 comparing Mr. Brockman's FDG PET to a typical dementia
20 patient, right?

03:59:01

21 **A.** Yes.

22 **Q.** But there is lots of literature that publishes images
23 of dementia patients with the FDG PETs, right?

24 **A.** Yes.

03:59:11

25 **Q.** So, there are plenty of examples of what a dementia

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1 brain looks like on an FDG PET, right?

2 **A.** Yes.

3 **Q.** Some of the literature just uses one patient with
4 dementia and compares it to another with dementia, right?

03:59:21

5 **A.** Correct.

6 **Q.** But some compare groups of patients with dementia to
7 a group of normal people to make an image that is an
8 amalgamation of multiple dementia patients?

9 **A.** Yes.

03:59:32

10 **Q.** And would you agree with me that those amalgamations
11 are fair samples that can explain to a layperson what a
12 dementia brain looks like?

13 **A.** Yes.

03:59:43

14 **Q.** Okay. So I just want to show you and, again, I am
15 going to say this is from the Darby slides, and some of
16 those -- and I do have the reports that they are from, so
17 I can hand them to you if you need them. Just let me
18 know.

19 **A.** Thank you.

03:59:57

20 **Q.** Okay. So, Doctor -- and, you know, I am going to
21 mark this so this doesn't get confusing. What are we up
22 to? Well, I will just start with 200.

23 MR. LANGSTON: 140.

24 By MR. MAGNANI:

04:00:20

25 **Q.** 140. Okay. I am marking this for identification as

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1 140. Well, you tell us, Doctor, what is this?

2 **A.** It's a showing temporal parietal hypometabolism, so
3 you can see the area in red is the area that's not
4 functioning well, and this pattern is consistent with
5 Alzheimer's disease.

04:00:45

6 **Q.** And I would like to show you another one. This one I
7 am going to mark as 141, just for identification.

8 And whenever you are ready, Doctor, can
9 you -- well, tell us what is going on, I guess, in the top
10 row and the bottom row.

04:01:10

11 **A.** So, it's showing hypometabolism, in particular in the
12 occipital lobes.

13 **Q.** Now --

14 **A.** Well, and there is much less evident hypometabolism
15 in the bottom row.

04:01:31

16 **Q.** And is that because the bottom row is one of those
17 amalgamations of MCI patients?

18 **A.** Yes.

19 **Q.** And the top row is an amalgamation of dementia
20 patients?

04:01:43

21 **A.** Correct.

22 **Q.** And in this case, these amalgamations are of
23 Parkinson's disease patients, right?

24 **A.** Yes.

04:01:50

25 **Q.** So, the top is PDD Dementia?

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1 **A.** Correct.

2 **Q.** And the bottom is PD-MCI?

3 **A.** Yes.

04:01:59

4 **Q.** So, we are never going to get your qualitative
5 experience, but to help us, are these fair and accurate
6 representations of a typical PDD patient and a typical
7 PD-MCI patient?

8 **A.** Yes.

04:02:11

9 **Q.** Okay. So, we could look at things like this and
10 compare it to Mr. Brockman's brain to help us understand
11 how he stacks up with other patients with these diagnoses?

04:02:41

12 **A.** So, unfortunately, there is so much variation as to
13 the extent and distribution of the FDG PET abnormalities
14 that you can't grade the degree of severity of impairment
15 just based on the FDG PET.

16 **Q.** And that is because -- and we have talked about this
17 a little bit before, right, that the neurodegeneration
18 indicated on the PET is not one-to-one with actual
19 cognitive impairment?

04:02:54

20 **A.** Correct.

21 **Q.** And we talked about this in the context of cognitive
22 reserve?

23 **A.** Correct.

04:03:10

24 **Q.** Now, when these types of amalgamations are done, in
25 the articles that they are from, there is like -- there is

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1 sometimes a table that explains things about the samples
2 that go into that?

3 **A.** Yes.

04:03:18

4 **Q.** And is one of the things that's measured in those
5 tables the MMSE Score?

6 **A.** Yes.

7 **Q.** And the reason they do that is because you want to
8 know the MMSE Score of each of these groups?

9 **A.** Yes.

04:03:26

10 **Q.** Okay. So, I am going to hand you this report. I am
11 a little disorganized, so just bear with me.

12 **A.** Sure.

13 MR. LOONAM: I am glad I am not the only one.

14 MR. MAGNANI: Learned it from you, James.

04:03:44

15 MR. LOONAM: Thank you.

16 MR. MAGNANI: May I approach the witness, Your
17 Honor?

18 THE COURT: You may approach.

19 THE WITNESS: Thank you.

04:03:54

20 BY MR. MAGNANI:

21 **Q.** And so the first question I want to ask you, Doctor,
22 is just -- and you know what, I'm just going to mark this
23 for identification. While I'm doing that, Doctor -- well,
24 I will do one thing at a time.

04:04:05

25 This will be 142. And, Doctor, are you

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1 able in Exhibit 142 to find the images from exhibit --
2 well, from the thing that is on the ELMO, which I'll note
3 for the record is Exhibit 141.

4 **A.** In the paper you handed me?

04:04:38

5 **Q.** Yes. Did I give you a black and white copy?

6 **A.** Yes, but that's -- that's okay.

7 **Q.** Are you sure?

8 **A.** Yeah.

04:04:48

9 **Q.** I have -- okay. Yes. In directing your attention to
10 page 1772, at the top of the page of Exhibit 142, is that
11 the same images?

12 **A.** Yes. Yeah.

13 **Q.** And just -- sorry, just to complete it for the
14 record. So those are the same images that are in Exhibit
15 141 on the ELMO?

04:05:01

16 **A.** Yes. Yes.

17 **Q.** Okay. All right. Now, can you flip to the last page
18 of Exhibit 142, please?

19 **A.** Yes.

04:05:18

20 **Q.** Okay. Now -- and tell me if this is disorienting. I
21 know we have Exhibit 141 on the screen, so we are all
22 looking at the images, but, Doctor, you're looking at 142
23 right now, right, the last page of that study?

24 **A.** Yes.

04:05:31

25 **Q.** And, by the way, just for the record, I'm sorry to

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1 jump around this study, but can you just -- I don't want
2 to have to be the one to try to read the name of this
3 study, Doctor, so could you please do it for the record?

4 **A.** The title?

04:05:44

5 **Q.** The title and publication, please.

6 **A.** Yes. It's from the European Journal of Nuclear
7 Medicine and Molecular Imaging, and the title is
8 "Posterior Parietal Occipital Hypometabolism May
9 Differentiate Mild Cognitive Impairment From Dementia and
10 Parkinson's Disease."

04:06:03

11 **Q.** And apologies to the court reporter. Sorry about
12 that.

13 So, looking at the table, in the back,
14 does it tell us how many different patients' FDG PETs were
15 compared for these images?

04:06:15

16 **A.** Yes, it does.

17 **Q.** And so for the MCI images, they compare 28 patients
18 with MCI, right?

19 **A.** Correct.

04:06:25

20 **Q.** And those patients had an MMSE Score of 28, right?

21 **A.** Correct.

22 **Q.** And in the PDD pictures, that's a group of 19
23 patients, right?

24 **A.** Correct.

04:06:37

25 **Q.** And the average MMSE Score of those 19 patients is

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1 18.5, right?

2 **A.** Correct.

3 **Q.** Now, Doctor, do you remember the MMSE Score that you
4 diagnosed Mr. Brockman at?

04:06:47

5 **A.** Yes. It was 17.

6 **Q.** Okay. So -- and 17 you said is in -- well, why don't
7 you remind me, is it in the moderate dementia range?

8 **A.** It is.

04:07:00

9 **Q.** Okay. And so 17, it's worse than the average of this
10 sample from this study, right?

11 **A.** Correct.

12 **Q.** Okay. So, with the Court's indulgence, Your Honor.

13 THE COURT: That's fine.

14 BY MR. MAGNANI:

04:08:01

15 **Q.** And sorry to do this, Doctor, I am going to flip back
16 to Exhibit 140, which I believe you testified, but you'll
17 correct me if I am wrong, that this is an image of
18 Alzheimer's patients?

19 **A.** Yes.

04:08:11

20 **Q.** And I am going to hand you the study again.

21 MR. LOONAM: Are you marking this one, too?

22 MR. MAGNANI: I will. It's a black and white.

23 THE WITNESS: Thank you.

24 BY MR. MAGNANI:

04:08:33

25 **Q.** And I am going to mark this -- this study as Exhibit

THOMAS WISNIEWSKI, M.D. - CROSS BY MR. MAGNANI

1 142.

2 All right. Doctor, this time can you
3 please just say the first two words of this study's name
4 and the author's name?

04:08:54

5 **A.** "Amyloid Hypometabolism," and the first author is
6 Edison.

7 **Q.** Okay. And do you know what journal this is from?

8 **A.** I -- Neurology.

9 **Q.** Okay. And if you flip to page 504, can you find that
10 image --

04:09:17

11 **A.** Yes.

12 **Q.** -- that is blown up?

13 **A.** Yes. Yes.

14 **Q.** And, sorry, I just -- just to complete for the
15 record, so I am going to repeat the question, and just
16 wait until I am done, please.

04:09:23

17 So exhibit 50 -- sorry, page 504 of
18 Exhibit 142 has the same images that are in Exhibit 140
19 blown up that we can all see, right?

04:09:36

20 **A.** Yes.

21 **Q.** Okay. And in this study -- and -- sorry, is it --
22 so now we can just look at 140, which is on the screen.

23 **A.** Yes.

24 **Q.** So, this is another one of those amalgamations,
25 right?

04:09:48

THOMAS WISNIEWSKI, M.D. - CROSS BY MR. MAGNANI

1 **A.** Correct.

2 **Q.** But this time it's a patient with Alzheimer's
3 disease, right?

4 **A.** Correct.

04:09:53

5 **Q.** Now, can you please go to page 502 of Exhibit 142 and
6 just tell the Court how many patients go into this
7 amalgamation?

8 **A.** 19.

9 **Q.** And what is the average MMSE Score of these patients?

04:10:18

10 **A.** 21.

11 **Q.** Okay. So, again, that's higher than 17, right?

12 **A.** Yes.

13 **Q.** Okay. And if I didn't ask earlier, I apologize, it's
14 repetitive. But, so, Exhibit 140 is a helpful tool? It's
15 a fair and accurate depiction of a reasonably demented
16 person with that MMSE Score?

04:10:37

17 **A.** Yes.

18 **Q.** Okay. And when -- we talked about this before, but
19 even us mere mortals, we can believe our eyes when we see
20 these things, right?

04:10:50

21 **A.** Yes.

22 **Q.** And so we can compare two images and tell which is
23 worse based on what we see?

24 **A.** Yes.

04:10:57

25 **Q.** Okay. I would now like to turn to -- I'll give you a

THOMAS WISNIEWSKI, M.D. - CROSS BY MR. MAGNANI

1 page number, but this is another one from Darby --

2 MR. MAGNANI: Actually, at this point I move to
3 admit exhibits -- I believe it's 140, 141, 142.

4 MR. LOONAM: No objection.

04:11:16 5 THE COURT: Without objection, Exhibits 140,
6 141 and 142 are admitted.

7 BY MR. MAGNANI:

8 Q. Okay. So, I would now like to show what I'm just
9 going to call Darby Slide No. 6, and I am going to mark
04:11:38 10 this as Exhibit 143, and I -- You know what, Doctor? I'm
11 just going to hand this to you first.

12 A. Yes. Thank you.

13 Q. And, Doctor, if you could just let me know, after you
14 have had time to look at that, and compare it to 140 and
04:12:10 15 141.

16 A. Yes.

17 Q. And is it fair to say that these are the same images
18 from 140 and 141 --

19 A. Yes.

04:12:29 20 Q. -- just with a different orientation?

21 A. Correct.

22 Q. Okay. Can I take that back from you, Doctor?

23 A. Yes.

24 Q. Thanks. And so -- and, so, Exhibit 143 is comparing
04:12:50 25 those amalgamations from the literature to Mr. Brockman's

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1 August FDG PET. Right?

2 **A.** Yes.

3 MR. MAGNANI: And at this point, Your Honor, I
4 would move 142 -- 143 into evidence. Okay?

04:13:08 5 MR. LOONAM: No objection.

6 THE COURT: 142 and 143 are admitted. I
7 thought we had just introduced 142.

8 MR. MAGNANI: Your Honor, it is definitely my
9 fault. I have 1 -- Sorry. This is 143.

04:13:19 10 THE COURT: Uh-huh.

11 MR. MAGNANI: Yeah. 140 is the -- you know, I
12 will show them to the doctor.

13 BY MR. MAGNANI:

14 **Q.** So, tell me if any of this is wrong.

04:13:30 15 140 is the Alzheimer's amalgamation; is
16 that right, Doctor?

17 **A.** Yes.

18 **Q.** Okay. 141 is the PDD and PD-MCI amalgamation.
19 Correct, Doctor?

04:13:45 20 **A.** Yes.

21 **Q.** And 143 is this slide that compares them to the
22 August FDG PET. Right, Doctor?

23 **A.** Yes.

04:14:00 24 THE COURT: So, 141 -- I just want to make sure
25 I get all this right. 140, 141, 142 and 143?

KATHY MILLER, RMR, CRR - kathy@miller-reporting.com

THOMAS WISNIEWSKI, M.D. - CROSS BY MR. MAGNANI

1 MR. MAGNANI: Now --

2 MR. LANGSTON: You have two 142s.

3 MR. MAGNANI: Okay. I'll find them. Yep. And
4 I understand the confusion now. I think I marked two 142s.

04:14:17 5 THE COURT: Okay.

6 MR. MAGNANI: So, I am going to de-mark them
7 with letters.

8 THE COURT: Okay.

9 BY MR. MAGNANI:

04:14:27 10 Q. Doctor, I am now showing you what I am going to --
11 You looked at this one before. Right, Doctor?

12 A. Yes.

13 Q. Okay. This is the -- this is the Edison study.
14 Right?

04:14:38 15 A. Yes.

16 MR. MAGNANI: Okay. I am going to now seek to
17 admit this as 142-A. And I apologize to everyone.

18 MR. LOONAM: No objection.

19 THE COURT: Okay. Again, without objection,
04:14:48 20 142-A is admitted and 143 is admitted.

21 BY MR. MAGNANI:

22 Q. And then I also show you what I am now marking as
23 142-B. Right, Doctor?

24 A. Yes.

04:14:59 25 Q. And this is the one where those -- the Parkinson's

THOMAS WISNIEWSKI, M.D. - CROSS BY MR. MAGNANI

1 images come from. Right?

2 **A.** Yes.

3 MR. MAGNANI: And if I haven't already moved to
4 admit this one, 142-B.

04:15:09 5 MR. LOONAM: No objection.

6 THE COURT: Okay. With no objection, it is
7 admitted, 142-B.

8 MR. MAGNANI: "B" as in "boy."

9 THE COURT: Got it.

04:15:15 10 BY MR. MAGNANI:

11 **Q.** Okay. Don't worry. No more imaging.

12 So, you talked a little bit about your
13 forensic experience, but is it fair to say you're more of
14 a clinical expert than a forensic expert?

04:15:45 15 **A.** Yes.

16 **Q.** And your work in this case was with an outfit called
17 The Forensic Panel. Right?

18 **A.** Correct.

19 **Q.** And besides Dr. Guilmette, do you consider any of the
04:15:56 20 other experts to be forensic experts?

21 **A.** I -- I can't judge that.

22 **Q.** Okay. Well, do you consider Dr. Agronin to be a
23 forensic expert or more of a clinical expert?

24 **A.** I believe more of a clinical expert.

04:16:10 25 **Q.** Okay. And are there some other people that you also

THOMAS WISNIEWSKI, M.D. - CROSS BY MR. MAGNANI

1 talked to at The Forensic Panel who did not file reports
2 in this case?

3 **A.** Initially, yes.

04:16:40

4 **Q.** Well, do you still have your report in front of you,
5 Doctor?

6 **A.** Yes, I do. Yeah.

7 **Q.** Okay. Could you please look in that report, and can
8 you just tell us what page you start listing your sources
9 of information?

04:16:50

10 **A.** Page 2 of 6.

11 **Q.** Okay. And on Page 2, how many numbered sources do
12 you list?

13 **A.** A lot. 44.

04:17:11

14 **Q.** And some of those sources are other doctors who did
15 not file expert reports. Right?

16 **A.** (No response.)

17 **Q.** And just -- just hold on one second there, Doctor.
18 This is Exhibit -- Defense Exhibit 24, and I'm just going
19 to pull it up now so we can all see it.

04:17:29

20 So, this here on Page 2 is where you start
21 listing your sources of information?

22 **A.** Yes.

23 **Q.** And it continues into Page 3?

24 **A.** Yes.

04:17:39

25 **Q.** And -- well, it ends at Page 3?

THOMAS WISNIEWSKI, M.D. - CROSS BY MR. MAGNANI

1 **A.** Yes. Yes.

2 **Q.** So, there are 44 sources that you considered.

3 Correct?

4 **A.** Yes.

04:17:47

5 **Q.** And some of these, like No. 35, 36 and 37, are peer
6 oversight calls; is that right?

7 **A.** Yes.

04:18:08

8 **Q.** Now, the three peer oversight calls that you cite in
9 your report are from June -- sorry -- June 24th, June 28th
10 and July 30th. Right?

11 **A.** Correct.

12 **Q.** So, on those occasions were you talking to other
13 members of The Forensic Panel who did not file reports in
14 this case?

04:18:18

15 **A.** Yes. They were brief conversations.

16 **Q.** Okay. Well, when you used the term "peer review" on
17 direct -- well, can I just ask you: "Peer review" is a
18 term that is used in your profession quite a bit. Right?

19 **A.** Yes.

04:18:34

20 **Q.** And would you agree with me that it means something
21 different in academia than what you are describing on
22 these calls?

23 **A.** It -- it really -- there isn't necessarily a
24 distinction. It's just -- it's an opinion discussion.

04:18:49

25 **Q.** But what's a peer-reviewed journal article?

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1 **A.** It's an article that's reviewed by your peers, which
2 is what's done in these discussions.

3 **Q.** But, for a peer-reviewed article, do lots of people
4 have access to it before it gets published as, quote, peer
5 review?

04:19:10

6 **A.** All the reviewers do, yes.

7 **Q.** Okay. And so who is Michael Welner?

8 **A.** He is the head of The Forensic Panel, and he's a
9 psychiatrist by training.

04:19:29

10 **Q.** Is he a forensic expert?

11 **A.** He is.

12 **Q.** So, a little different than Dr. Agronin, even though
13 they are both psychiatrists?

14 **A.** Correct.

04:19:37

15 **Q.** So, Welner is more of a forensic guy and Agronin more
16 of a clinical guy?

17 **A.** Correct.

18 **Q.** And who is Elkhonon Goldberg?

19 **A.** So, he's a psychologist, a quite -- so, he is the NYU
20 faculty member who referred me to The Forensic Panel.

04:19:49

21 **Q.** Okay. And is he like a forensic guy or a clinical
22 guy?

23 **A.** He's a clinical guy.

24 **Q.** Okay. What about James Seward?

04:20:02

25 **A.** That I -- I can't -- I have not seen his CV. I don't

THOMAS WISNIEWSKI, M.D. - CROSS BY MR. MAGNANI

1 know.

2 Q. But was he on one of these peer review calls with
3 you?

4 A. He was. Yeah.

04:20:14 5 Q. But you're just not sure what he does?

6 A. Correct. Yeah.

7 Q. Okay. Bernice Marcopulos?

8 A. Same.

9 Q. Same, that you don't know what she does?

04:20:24 10 A. I don't know.

11 Q. But she was on the call. Right?

12 A. Yes.

13 Q. Okay. And Timothy Shepherd?

14 A. He's a neuroradiologist.

04:20:30 15 Q. Okay. So, radiologist, probably not forensic; is
16 that right?

17 A. He's a clinical, yeah.

18 Q. Okay. Now, were these calls the calls that you
19 described before where you were discussing ordering the
04:20:43 20 amyloid PET?

21 A. I -- I can't recall exactly when that discussion was.

22 Q. Well, let me ask you this question. As you think
23 back about those discussions, can you tell us all the
24 names of people that you remember being part of those
04:20:58 25 discussions?

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THOMAS WISNIEWSKI, M.D. - CROSS BY MR. MAGNANI

1 **A.** I really only recall the other three experts that
2 filed reports and Dr. Welner that -- being definitely part
3 of that discussion.

4 **Q.** Okay. So and --

04:21:19

5 **A.** And, actually, Dr. Shepherd was as well.

6 **Q.** So, even though your report says there were calls to
7 other people, it's your testimony that you just don't
8 remember them?

04:21:35

9 **A.** I -- I don't remember the details of those calls
10 sufficiently.

11 **Q.** But you are pretty confident they happened since you
12 put them in your report?

13 **A.** Correct. Correct. And I billed for them.

04:21:46

14 **Q.** So, are you pretty confident that all the things that
15 you list that you reviewed in your report are things that
16 you actually did?

17 **A.** Yes.

18 **Q.** Okay. And billed for?

19 **A.** Yes.

04:21:55

20 **Q.** Okay. So, help me understand this one, Doctor.

21 So, you said you billed about -- you have
22 been paid \$5,000. Right?

23 **A.** Right.

24 **Q.** And have got another ten coming your way?

04:22:05

25 **A.** Yes.

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THOMAS WISNIEWSKI, M.D. - CROSS BY MR. MAGNANI

1 Q. Okay. So, \$15,000. Right?

2 A. Right.

3 Q. \$325 dollars an hour. Okay?

4 A. Right.

04:22:12

5 Q. So, about how many hours do you think you have put in
6 this case? Well, let me ask you this. About 40 hours?

7 A. So, I haven't billed for November.

8 Q. Well, so, is there a substantial change in November?

9 A. Yes.

04:22:29

10 Q. Well, let me ask you this question. Besides
11 preparing for testimony, you didn't file any reports in
12 November. Right?

13 A. Correct.

04:22:39

14 Q. Okay. So, when you formed your conclusions in this
15 case you had done about \$15,000 of work?

16 A. So, actually, due to my lack of experience doing so
17 much forensic work, I myself did not maintain good records
18 of how many hours I spent. So, I only billed for what I
19 had clear records for.

04:23:06

20 Q. Okay. So, you were billing maybe an under-
21 estimation?

22 A. Correct.

23 Q. But you would agree with me you did not watch the
24 full content of all the videos that are listed in this

04:23:15

25 report.

KATHY MILLER, RMR, CRR - kathy@millers-reporting.com

THOMAS WISNIEWSKI, M.D. - CROSS BY MR. MAGNANI

1 A. No.

2 Q. Right?

3 A. No.

4 Q. That would be way more --

04:23:18

5 A. Yes. Yes.

6 Q. -- than 40 hours. Right?

7 A. Yes. That's true.

8 Q. Just the expert recorded videos alone were multi -- I
9 mean, it was --

04:23:28

10 A. Correct.

11 Q. Dr. Ryan Darby. Right?

12 A. Correct.

13 Q. He did a recorded interview?

14 A. Correct.

04:23:32

15 Q. Okay. Dr. Mark Dietz and Dr. Denney did two days of
16 recorded interviewing in May?

17 A. Correct.

18 Q. Then Dr. Guilmette and Dr. Agronin --

19 A. Correct.

04:23:42

20 Q. -- did -- Sorry. I just have to finish just so --

21 So, Dr. Guilmette and Dr. Agronin did two
22 or three more days in July. Right?

23 A. Yes.

24 Q. Okay. And then both sides had another crack at this
25 in October. Right?

04:23:54

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THOMAS WISNIEWSKI, M.D. - CROSS BY MR. MAGNANI

1 **A.** Correct.

2 **Q.** And let me ask you this. Putting aside how good you
3 are at keeping track of the billing records, did you bill
4 for your time to travel out to Houston to conduct the
5 exam?

04:24:06

6 **A.** Actually, I didn't.

7 **Q.** Okay. So, that's something you should work on,
8 Doctor.

9 **A.** Thank you.

04:24:19

10 **Q.** All right. And the records that -- Well, one more
11 thing.

12 There were two days of recorded
13 depositions in this case listed in your report. Right?

14 **A.** Yes.

04:24:31

15 **Q.** And there were two other days of non-video but
16 transcripts of depositions. Right?

17 **A.** Right.

18 **Q.** And is it fair to say that you didn't go through all
19 of those completely?

04:24:41

20 **A.** Yes. That's correct.

21 **Q.** But you did testify about it on direct. Right?

22 **A.** Yes.

23 **Q.** And how your review of those videos informed your
24 opinion?

04:24:51

25 **A.** Yes.

KATHY MILLER, RMR, CRR - kathy@millers-reporting.com

THOMAS WISNIEWSKI, M.D. - CROSS BY MR. MAGNANI

1 Q. And your testimony was something like -- and, please,
2 this is where you have to correct me if I am wrong -- that
3 you thought that the January 2019 deposition videos were
4 consistent with moderate dementia?

04:25:04

5 A. So -- With dementia?

6 Q. Yeah.

7 A. It is consistent with dementia. Whether it was
8 moderate or not at that time I can't state.

04:25:21

9 Q. And would you agree that the terms -- the
10 demarcations between mild, moderate and severe are
11 somewhat subjective?

12 A. Yes.

13 Q. But there is a definition for when MCI ends and
14 dementia starts. Right?

04:25:31

15 A. Yes.

16 Q. And, so, that demarcation is when there is a loss of
17 functional independence?

18 A. Yes.

04:25:41

19 Q. So, what you're saying is, when you watched those
20 videos, they support your view that Mr. Brockman had a
21 loss of functional independence as of January 2019?

22 A. No.

04:25:54

23 Q. Okay. So, this is one where I want you to explain,
24 because I want to make sure we all understand. So, is
25 there anything else?

THOMAS WISNIEWSKI, M.D. - CROSS BY MR. MAGNANI

1 Like, explain again how -- When you
2 watched those videos, you testified on direct that you
3 think they are consistent with dementia. Correct?

4 **A.** Yes.

04:26:05

5 **Q.** Okay. But can you sort of explain that?

6 **A.** So, I am not using those videos for evidence of
7 dementia. I am using collateral information. My
8 statement that they're consistent with dementia is that a
9 demented person can have such good function as what you're
10 seeing on those videos.

04:26:28

11 **Q.** So, basically, what you're saying is it's possible
12 for a demented person to perform that well?

13 **A.** Correct.

14 **Q.** And you also said in your reports that your clinical
15 patients are some pretty high-functioning people?

04:26:38

16 **A.** Yes.

17 **Q.** And, so, you have seen examples of people with
18 dementia that function at a pretty high level?

19 **A.** I, for example, have seen surgeons who continue to
20 perform surgery very well with a significant dementia,
21 with a moderate dementia.

04:26:52

22 **Q.** Moderate dementia. Okay.

23 And, again, because those terms are a
24 little bit fuzzy, I just want to ask a few clarifying
25 questions about what you mean; so, one second, please.

04:27:09

THOMAS WISNIEWSKI, M.D. - CROSS BY MR. MAGNANI

1 So, when I -- the term "moderate
2 dementia," does that apply to people who can sort of lose
3 track of their orientation in space and time?

4 **A.** Yes.

04:27:35

5 **Q.** Unable to recognize friends. Right?

6 **A.** Correct.

7 **Q.** And these are the types of people that you probably
8 wouldn't want to leave at home alone for too long?

9 **A.** Correct.

04:27:46

10 **Q.** Probably shouldn't drive. Right?

11 **A.** Correct.

12 **Q.** Okay. Do you know if Mr. Brockman was still driving
13 in 2019?

14 **A.** His wife took away the keys in 2019.

04:27:57

15 **Q.** Well, that's what she told you. Right?

16 **A.** That's what she told me. And I believe she also told
17 me that he still drove. He got the keys. So --

18 **Q.** So -- and correct me if I am wrong, but what I am
19 hearing you say is that he was advised not to drive in
20 2019?

04:28:19

21 **A.** Correct.

22 **Q.** But it sounds like she told you he kept driving in
23 2019?

24 **A.** That there were episodes where he drove.

04:28:25

25 **Q.** And are you familiar with Dr. Lai?

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THOMAS WISNIEWSKI, M.D. - CROSS BY MR. MAGNANI

1 **A.** Eugene Lai, yes.

2 **Q.** So, who is Dr. Lai, in case not everyone remembers?

3 **A.** He's a Parkinson's disease specialist. He's at the
4 Methodist Houston hospital.

04:28:41

5 **Q.** And he has been treating Mr. Brockman's Parkinson's
6 for years. Right?

7 **A.** Yes.

8 **Q.** And as of February 21 -- sorry -- February 2021, he
9 had diagnosed Mr. Brockman as having PD-MCI. Right?

04:28:56

10 **A.** 2019?

11 **Q.** 2021, sir.

12 **A.** He diagnosed him in -- with PDD.

13 **Q.** So, I -- I am asking about February 2021.

14 Are you saying that he diagnosed him with
15 PDD in February 2021?

04:29:12

16 **A.** I, actually -- I -- I remember the October 7th note
17 that he wrote where he diagnosed him with PDD. I actually
18 don't recall what he diagnosed him in February.

19 **Q.** Okay. Do you recall that in February 2021

04:29:37

20 Mrs. Brockman reported that Mr. Brockman was still
21 driving?

22 **A.** I -- no, I don't recall that.

23 **Q.** Do you know if Mr. Brockman was firing assault rifle
24 s through 2020?

04:29:54

25 **A.** I don't know that.

THOMAS WISNIEWSKI, M.D. - CROSS BY MR. MAGNANI

1 Q. Okay. If you did know that, could that affect your
2 opinion?

3 A. No.

4 Q. Okay.

04:29:59 5 A. Unfortunately, I have had patients with guns and
6 accidents.

7 Q. If you knew he was driving in 2020 and 2021, would
8 that affect your opinion?

04:30:17 9 A. It would -- I would seek information as to how he was
10 driving.

11 Q. Okay. And -- Sorry. In your report, Doctor, you
12 write on the first page -- and I am going to pull it up.
13 And, again, this is Defense Exhibit 24. And do you see on
14 that page where you say, "He had a number of medical
04:30:48 15 problems for which he received treatment from physicians,
16 but did not seek medical attention for memory impairment
17 until 2017"?

18 A. Yes.

19 Q. Do you know what the evidence is that -- Well, why do
04:31:00 20 you think he sought medical attention for memory
21 impairment in 2017?

22 A. Because I believe he mentioned it to the physicians
23 that he was seeing at that time, that he had memory
24 problems.

04:31:17 25 Q. Okay. So, by "the physicians that he was seeing at

THOMAS WISNIEWSKI, M.D. - CROSS BY MR. MAGNANI

1 that time" do you mean like his general practitioner? If
2 you don't know, just --

3 **A.** I -- I don't recall.

4 **Q.** Do you know who Dr. Stuart Yudnofsky is?

04:31:31

5 **A.** I -- I -- at this moment I don't recall.

6 **Q.** Okay. Do you know what Defense Exhibit No. 1 is in
7 this case?

8 **A.** No.

04:31:55

9 **Q.** And -- Yeah. You have the binder, Doctor. So, if
10 you hand it back to me we can work with the --

11 **A.** Sorry. Yeah.

12 **Q.** -- we can work with the projector.

13 **A.** Sure. Sure.

04:32:14

14 **Q.** Okay. For the record, I am showing Defense
15 Exhibit 1. And, Doctor, you tell me if I need to zoom in
16 because I know it's pretty small.

17 And you know what? Actually, Doctor,
18 starting at the bottom, can just read -- well, this is an
19 e-mail from May 3rd, 2017. Right?

04:32:31

20 **A.** Yes.

21 **Q.** Well, you know what? Let ask a more fair question.

22 Have you seen this before?

23 **A.** I can't say with certainty -- I think I have, because
24 I -- I recalled the reference to the smell.

04:32:49

25 **Q.** Okay. And, so, could this be what you were thinking

THOMAS WISNIEWSKI, M.D. - CROSS BY MR. MAGNANI

1 of when you wrote in your report that Mr. Brockman did not
2 seek medical attention for memory impairment until 2017?

3 **A.** Yes.

4 **Q.** And you said you didn't -- Sorry. I don't want to
5 put words in your mouth here.

04:33:05

6 What can you tell us about Dr. Stuart
7 Yudnofsky?

8 **A.** Nothing that I can recall at the present time.

9 **Q.** And, Doctor, can you recall the approximate date?

04:33:20

10 Well, let me ask you this question.

11 Do you know that -- do you know who Evatt
12 Tamine is?

13 **A.** No.

14 **Q.** And do you know if a search warrant was executed at
15 an associate of the defendant's house at some point in the
16 context of this case?

04:33:32

17 **A.** No.

18 **Q.** I want to go back to your report, Doctor, so that's
19 Exhibit 24, and I am going to move to Page 5. And,
20 Doctor, please, tell me if you can't see it, because,
21 actually --

04:33:59

22 **A.** I have it. Thank you.

23 **Q.** Oh. You do? Okay.

24 **A.** Yeah.

04:34:12

25 **Q.** And on this page do you say, quote, "Cognitive

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1 testing is consistent with dementia and has been confirmed
2 by multiple examiners"?

3 **A.** Yes.

4 **Q.** Okay. So, when you say the word "confirmed" does
04:34:26 5 that mean "proven"?

6 **A.** The -- on each of the tests there was evidence of
7 cognitive dysfunction and dementia.

8 **Q.** Okay. But, if possible -- We talked about
9 malingering before. Right?

04:34:45 10 **A.** Right.

11 **Q.** So, would you agree with me that these kind of tests
12 can't confirm dementia in a forensic setting?

13 **A.** I -- I think the testing by itself can't give you
14 100 percent certainty, no.

04:35:01 15 **Q.** Okay.

16 **A.** It has to be confirmed by some other means.

17 **Q.** So, you go on, on this page, to say that
18 Dr. Guilmette's tests, quote, confirm dementia; is that
19 right?

04:35:14 20 **A.** Correct.

21 **Q.** Do you know -- Well, let me ask you this.

22 In March 2019, are you aware that a Dr.
23 Michele York conducted a battery of neurocognitive tests
24 on him?

04:35:29 25 **A.** Yes. Yes.

THOMAS WISNIEWSKI, M.D. - CROSS BY MR. MAGNANI

1 Q. Do you recall how he did on those tests?

2 A. Without reviewing that file, I don't recall.

3 Q. Well, and these tests are broken into multiple
4 components. Right?

04:35:41

5 A. Yes.

6 Q. And one of those components is memory. Right?

7 A. Correct.

8 Q. And although different people with dementia can have
9 different respective deficits --

04:35:51

10 A. Yes.

11 Q. -- in this -- do you have a recollection that
12 Mr. Brockman did particularly bad on the memory section?

13 A. I don't recall exactly on that.

04:36:04

14 Q. Okay. So, on direct examination, you talked about
15 the consistency of poor cognitive testing data over time.
16 Do you remember that?

17 A. Yes.

18 Q. Okay. So, it sounds like what you're saying -- but
19 please correct me if I am wrong -- is that, even though

04:36:14

20 you remember the consistent trend of very poor testing, it
21 sounds like you don't really have a good memory of the
22 different components. Is that right?

23 A. The absolute specifics, yeah. Yes.

04:36:29

24 Q. Would it surprise you if Mr. Brockman on the -- on
25 the March 2019 York tests scored in the bottom one

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THOMAS WISNIEWSKI, M.D. - CROSS BY MR. MAGNANI

1 percentile on memory?

2 **A.** No. No, it wouldn't.

3 **Q.** Okay. So, would you agree -- You testified about
4 Mr. Brockman's cognitive deficits and how they might
5 impact his ability to work with attorneys. Right?

6 **A.** Correct.

7 **Q.** And would you agree that memory is a pretty important
8 cognitive faculty to have control of?

9 **A.** Yes.

10 **Q.** And particularly important when it comes to working
11 on complicated legal matters?

12 **A.** Absolutely. Yes.

13 **Q.** In that January 2019 deposition, the one that's on
14 video -- you watched some of it. Right?

15 **A.** Yes.

16 **Q.** Did you watch the part where he talked about having
17 prepared with his lawyers in that case for two days?

18 **A.** Yes.

19 **Q.** Okay. So, you are aware that this person prepared
20 with his lawyers for two days and then sat for two days of
21 depositions. Correct?

22 **A.** Yes.

23 **Q.** And I just want to make sure I understand. Do you
24 think that's consistent with somebody who is in the bottom
25 one percentile of memory among people his age?

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1 **A.** The fact that he prepared with his lawyers for two
2 days doesn't speak to how effective it was.

3 **Q.** Well, could his performance perhaps speak to how
4 effective it was?

04:37:50

5 **A.** It could.

6 **Q.** Now, and just -- I do want to just make sure that I
7 understand. Your -- would it be fair to describe your
8 conclusions as relying heavily on what you call, quote,
9 family and close acquaintances?

04:38:16

10 **A.** One always takes collateral damage from that source
11 in every patient.

12 **Q.** And when you say "collateral" -- you said "collateral
13 damage." I think you meant something else.

14 **A.** Yes. "Collateral information."

04:38:27

15 **Q.** Okay. We will look after each other here, Doctor.

16 **A.** Sorry.

17 **Q.** Okay. So, what you're saying is in your clinical
18 practice you interview collateral sources?

19 **A.** It's required.

04:38:38

20 **Q.** And it's important in coming to a clinical
21 determination?

22 **A.** Yes. Yes.

23 **Q.** Sometimes a person with dementia might not be the
24 most accurate reporter of their symptoms?

04:38:45

25 **A.** They rarely are.

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THOMAS WISNIEWSKI, M.D. - CROSS BY MR. MAGNANI

1 Q. And, so, sometimes you need to ask the wife. Right?

2 A. Yes. Always.

3 Q. Or --

4 A. Or the spouse.

04:38:52 5 Q. Yeah. Or the son. Right?

6 A. Correct.

7 Q. Sometimes -- Well, let me ask you this. In a
8 clinical situation, is it common to talk to people's work
9 associates?

04:39:04 10 A. Yes.

11 Q. Okay. So, do you know what Mr. Brockman's work
12 associates said about his cognitive abilities in this
13 case?

14 A. In this case, I do not.

04:39:15 15 Q. Okay. So, would it surprise you if -- Do you know
16 who Tommy Barras is?

17 A. I know the name, yeah.

18 Q. And, so, Tommy Barras is the person that stepped in
19 the defendant's shoes after the indictment, when defendant
04:39:28 20 stepped down as CEO of Reynolds and Reynolds. Right?

21 A. Yes.

22 Q. And do you understand that Tommy Barras sat for a
23 deposition in March 2021 -- excuse me -- in March 2021?

24 A. I didn't know that.

04:39:39 25 Q. Okay. So, would it surprise you if in that

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1 deposition Tommy Barras said under oath that he had no
2 concerns about the defendant's cognitive abilities all the
3 way through the time the defendant stepped down?

4 **A.** That would surprise me.

04:39:55

5 **Q.** Now, when you are reviewing collateral sources in a
6 clinical setting, is it fair to say you can assume they're
7 telling you the truth?

8 **A.** Yes.

9 **Q.** Or, at least, not purposely lying. Right?

04:40:13

10 **A.** Correct.

11 **Q.** A little different in a forensic setting. Right?

12 **A.** Yes.

13 **Q.** And, so, did you consider if Tommy Barras might have
14 a motivation to fabricate when he spoke to anyone in this
15 case?

04:40:23

16 **A.** That, I can't make a judgment.

17 **Q.** I was asking if you considered it.

18 **A.** I didn't consider it.

19 **Q.** Did you consider whether the defendant's wife might
20 have a motivation to fabricate anything?

04:40:32

21 **A.** Yes.

22 **Q.** You did consider that?

23 **A.** Yes.

24 **Q.** Okay. So, walk us through it. How did you evaluate
25 whether or not she was fabricating?

04:40:38

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THOMAS WISNIEWSKI, M.D. - CROSS BY MR. MAGNANI

1 **A.** By just the consistency and the accuracy of what she
2 was saying.

3 **Q.** Okay.

04:41:01

4 **A.** Her description of Mr. Brockman's performance is
5 fully consistent with the way other spouses describe their
6 demented loved one. So, I didn't see any inconsistency.

7 **Q.** So --

04:41:28

8 **A.** But I would say it's also difficult to really assess
9 whether she is lying or not. But the -- she seemed
10 genuine.

11 **Q.** Okay. And that's a subjective assessment --

12 **A.** Yes.

13 **Q.** -- that she seemed genuine. Right?

14 **A.** Yes.

04:41:42

15 **Q.** And in assessing Mrs. Brockman, did you consider the
16 fact that she did not talk to the government doctors who
17 wanted to interview her?

18 MR. LOONAM: Objection. Misstates the
19 evidence.

04:41:53

20 MR. MAGNANI: Well, let me --

21 THE COURT: You can ask the question.

22 BY MR. MAGNANI:

04:42:03

23 **Q.** Would it -- could it change your assessment of
24 Mrs. Brockman's reliability if you knew that she refused
25 to speak to Dr. Dietz?

THOMAS WISNIEWSKI, M.D. - CROSS BY MR. MAGNANI

1 **A.** It wouldn't change the assessment.

2 **Q.** Would it change -- in considering -- Well, I'll move
3 on.

04:42:22

4 Did you account for the fact that the
5 people that you spoke to might have some loyalty to the
6 defendant?

7 **A.** Yes.

8 **Q.** So, walk us through that one again. How did you
9 account for it?

04:42:30

10 **A.** So, again, just asking broadly what their -- what
11 they observed and their description of the dysfunction.
12 And their description of the problems that they enumerated
13 were very much like what caregivers describe for dementia
14 patients. So, I didn't see anything that was glaringly
15 inappropriate.

04:42:58

16 **Q.** And you're making this -- kind of like with the
17 images, you're comparing this to your -- what -- you know,
18 your lived experience; is that right?

19 **A.** Yes.

04:43:08

20 MR. MAGNANI: Just one second, please.

21 (Counsel confer off the record.)

22 BY MR. MAGNANI:

23 **Q.** Can you sort of give us -- help us understand the
24 start date and end date of your engagement on this case?

04:43:28

25 Well, sorry. That's a bad question. Let

THOMAS WISNIEWSKI, M.D. - CROSS BY MR. MAGNANI

1 me ask you this.

2 Do you remember when you were first
3 retained in this case?

4 **A.** I -- no, I don't, unfortunately.

04:43:38

5 **Q.** Well, can you -- Well, your first report was
6 submitted in August of 2021.

7 **A.** Yes.

8 **Q.** Right? And I think we said there was some
9 peer-review calls in -- was it June?

04:43:47

10 **A.** Yes. So, perhaps around May.

11 **Q.** Okay. Because you said those peer review calls were
12 pretty early in the process?

13 **A.** Correct. Correct.

04:43:59

14 **Q.** And, so, from when you were first retained in May
15 until you filed your report, was this a pretty clear case
16 of dementia to you, or was it one that you really had to
17 wrestle with to get to the right answer?

18 **A.** It was a clear case of dementia from the
19 information --

04:44:17

20 **Q.** Okay.

21 **A.** -- I had. I hadn't made an assessment on severity.

22 **Q.** And if the information that you had -- Well, when you
23 say the information you had, do you mean the things we
24 were just talking about --

04:44:31

25 **A.** Yes.

THOMAS WISNIEWSKI, M.D. - REDIRECT BY MR. LOONAM

1 Q. -- like the collateral sources?

2 A. Yes.

3 Q. So, if that information were to turn out to be
4 unreliable, could that impact your opinion in this case?

04:44:38

5 A. At this point, no.

6 MR. MAGNANI: Okay. I have no further
7 questions.

8 THE COURT: We are going to continue on until
9 5:00. So, is it possible --

04:44:51

10 MR. LOONAM: I am on the clock, and I will
11 not -- I will try not to open up recross.

12 THE COURT: No. No. No. If we need to -- I
13 just want to tell you, if we have to go past 5:00, the
14 doctor is going to come back.

04:45:03

15 MR. LOONAM: Yes.

16 MR. MAGNANI: You can start. Sorry, I'm a
17 mess.

18 MR. LOONAM: No. You're not a mess. You're
19 fine. You're fine. I'm just going to move your exhibit,
20 if you don't mind.

04:45:10

21 **REDIRECT EXAMINATION**

22 BY MR. LOONAM:

23 Q. Doctor, I am going to show you what is in evidence as
24 Defense Exhibit 39, and this is the PET scan from March
25 12th of '21.

04:45:21

THOMAS WISNIEWSKI, M.D. - REDIRECT BY MR. LOONAM

1 **A.** Yes.

2 **Q.** And in the "Impressions" -- can you read the
3 impressions into the record?

04:45:34

4 **A.** "The findings are very mild but suggestive of early
5 neurodegenerative disease, either Alzheimer's disease or
6 dementia with Lewy body, Parkinson's disease with
7 dementia."

8 **Q.** Okay. And, so, this impression from March -- And
9 this is an FDG PET --

04:45:48

10 **A.** Yes.

11 **Q.** -- that shows the hypometabolism and the brain
12 dysfunction?

13 **A.** Yes.

04:45:55

14 **Q.** And, so, with the impression of potential Alzheimer's
15 disease, what's -- how can you confirm whether or not
16 Mr. Brockman's brain had Alzheimer's pathology?

17 **A.** By doing an amyloid PET.

18 **Q.** And that's the amyloid PET that was ordered after you
19 already had the positive FDG PET?

04:46:09

20 **A.** Yes.

21 **Q.** You had described an interesting story about a
22 surgeon who would conduct surgery even with dementia.

23 **A.** Correct.

04:46:26

24 **Q.** Can you tell us about that? How is that possible and
25 how does that story play out?

KATHY MILLER, RMR, CRR - kathy@miller-reporting.com

THOMAS WISNIEWSKI, M.D. - REDIRECT BY MR. LOONAM

1 **A.** So, motor memory is affected in neurodegenerative
2 diseases very late. It's the last thing to go. So, for
3 example, golf players who excel, their golf game doesn't
4 necessarily deteriorate until very late in the disease.

04:46:49

5 And the surgeon performing a motor set of movements that
6 he's done thousands of times, that function can be fully
7 retained until surprisingly late in the dementing process.

04:47:17

8 **Q.** And with respect to -- Well, when that person steps
9 out of the -- the motor fun, the playing golf, or the
10 doing surgery, how -- what's the status of their other
11 domains in their memory function?

04:47:36

12 **A.** It can be almost nonexistent. And the pathology
13 behind that is motor memory is in part retained in the
14 cerebellum, which is the posterior part of the brain stem,
15 and that is affected very late in neurodegenerative
16 disorders. So, the motor memory, really, can be retained.

17 **Q.** And with respect to -- you had testified before about
18 overlearned behavior?

19 **A.** Correct.

04:47:54

20 **Q.** And -- but does overlearned behavior -- does -- does
21 that have anything to do with impairment on -- on
22 judgment, for example?

23 **A.** No.

24 MR. LOONAM: No further questions, Your Honor.

04:48:09

25 THE COURT: Cross-examination -- or re-?

THOMAS WISNIEWSKI, M.D. - REDIRECT BY MR. LOONAM

1 MR. MAGNANI: No. Thanks, Your Honor.

2 THE COURT: I just have a quick question,
3 Doctor, and I'll let you go.

04:48:21

4 You said that motor memory is the last
5 thing to go. And, so, someone would be able to conduct
6 surgery, you know, right up until the very -- I guess, the
7 advanced stages of the disease.

04:48:39

8 THE WITNESS: So, that -- I was thinking of
9 quite an unusual example. Typically, that continuation is
10 only manifest in the early stages of dementia where you can
11 maintain that function. But I -- there was a specific
12 example of someone continuing even in moderate dementia,
13 and he -- he had enablers.

14 THE COURT: Okay.

04:48:57

15 MR. LOONAM: Your Honor, actually, could I --
16 with the Court's indulgence, one question?

17 THE COURT: Sure.

18 **FURTHER REDIRECT EXAMINATION**

19 BY MR. LOONAM:

04:49:02

20 **Q.** The last question you had from the government was
21 whether -- if you found out that some information you had
22 received was unreliable, would it change your conclusion
23 now? And you said -- right now, and I think you said,
24 "No." Right?

04:49:14

25 **A.** Correct.

THOMAS WISNIEWSKI, M.D. - REDIRECT BY MR. LOONAM

1 Q. Why not?

2 A. Because there is so much corroborating evidence in
3 terms of imaging and other objective measures.

4 MR. LOONAM: No further questions.

04:49:25

5 THE COURT: Okay. Anything further?

6 MR. MAGNANI: No. It's okay, Your Honor.

7 THE COURT: Okay. Great.

8 May this witness be excused?

9 MR. LOONAM: Yes, Your Honor.

04:49:34

10 THE COURT: Doctor, thank you so much for
11 putting up with us for a couple hours. You may be excused,
12 sir.

13 THE WITNESS: Pleasure. Thank you. Very nice
14 to meet you, sir.

04:49:41

15 THE COURT: Nice to meet you.

16 MR. LOONAM: Thanks, Doctor.

17 THE COURT: Okay, counsel. We made it through
18 the day.

19 MR. LOONAM: Thank you, Your Honor.

04:49:48

20 THE COURT: I am thinking, let's start again
21 tomorrow morning at 8:30, if it's okay. Let's just keep
22 pushing. That way, we will get a little bit of extra time
23 during the day.

24 And I am still looking into Saturday. It

04:50:01

25 turns out it's not just as easy as me and my staff. The

1 question is I have got to get AC turned on, and the
2 building security, and there is a lot of different --

04:50:15

3 MR. LOONAM: We have a lot of issues, too, Your
4 Honor, with respect to certain witnesses and Jewish
5 observance and whatnot.

04:50:26

6 MR. VARNADO: We are going to have a really
7 difficult time with Saturday, Judge. I think we could
8 finish this if we do continue through Monday and Tuesday.
9 We can be done Tuesday. We have shared that with the
10 government. Saturday may just literally not been an option
11 for us.

12 THE COURT: I was just going to tell you, from
13 my end looking into it, it doesn't look like it's possible.
14 So, that works out well.

04:50:35

15 So, let's just go ahead and get started at
16 8:30 again, and we can push through tomorrow until, like we
17 have been, about 6:00. But we just can't do it today
18 because I have got to give some folks some bad news that
19 they are not going to trial on Monday.

04:50:51

20 MR. LOONAM: Some of them might appreciate it.

21 THE COURT: Yeah. That's true. That's true.

22 MR. SMITH: They can enjoy their Thanksgiving.

23 THE COURT: So, we will stand in adjournment
24 until 8:30 tomorrow.

25 (Recessed at 5:10 p.m.)

1 COURT REPORTER'S CERTIFICATE

2

3 I, Kathleen K. Miller, certify that the foregoing is a
4 correct transcript from the record of proceedings in the
5 above-entitled matter.

6

7 DATE: 11/20/21

/s/ Kathleen K. Miller

8

Kathleen K. Miller, RPR, RMR, CRR

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05:10:11

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\$	161 [1] - 3:7 17 [6] - 1:6, 4:2, 130:5, 130:6, 130:9, 132:11 1772 [1] - 128:10 17th [1] - 61:17 18.5 [1] - 130:1 19 [3] - 129:22, 129:25, 132:8 1990s [3] - 18:2, 18:5, 18:11 1999 [1] - 18:16 1:06 [2] - 1:5, 4:3	3
\$10,000 [1] - 61:2 \$100,000 [1] - 49:5 \$15,000 [2] - 142:1, 142:15 \$2,000 [1] - 46:17 \$25 [1] - 21:4 \$325 [2] - 60:18, 142:3 \$5,000 [2] - 60:21, 141:22		3 [8] - 1:13, 21:14, 21:21, 32:4, 44:22, 45:14, 137:23, 137:25 3-million-dollar [3] - 20:24, 22:7, 45:14 30 [3] - 56:21, 59:1, 63:16 30th [1] - 138:10 31 [1] - 56:18 3300 [1] - 2:3 34.18 [1] - 105:25 340 [1] - 58:14 342 [1] - 109:24 35 [1] - 138:5 36 [1] - 138:5 37 [1] - 138:5 39 [1] - 161:24 3:00 [1] - 84:24 3:11 [1] - 85:8 3rd [1] - 150:19
,	2	4
'19 [1] - 100:25 '21 [2] - 123:8, 161:25 '90s [1] - 18:21 'empty [1] - 13:21 'Had [1] - 13:25	2 [4] - 108:1, 137:10, 137:11, 137:20 2-million-dollar [2] - 21:6, 21:17 20 [1] - 81:15 200 [1] - 124:22 2000 [1] - 18:16 20002 [1] - 1:22 2004 [2] - 10:22, 23:24 2010 [1] - 31:6 2011 [7] - 19:20, 20:2, 20:18, 21:5, 22:17, 29:24, 31:15 2013 [4] - 34:20, 35:10, 35:22, 41:24 2014 [6] - 29:10, 29:16, 37:8, 39:20, 40:25, 44:2 2015 [1] - 19:14 2017 [4] - 149:17, 149:21, 150:19, 151:2 2018 [18] - 12:14, 24:9, 52:21, 72:9, 77:14, 77:16, 77:17, 97:4, 99:5, 100:25, 111:12, 111:19, 111:22, 111:25, 112:9, 112:18, 112:23, 123:8 2019 [14] - 25:7, 52:2, 83:6, 100:17, 145:3, 145:21, 147:13, 147:14, 147:20, 147:23, 148:10, 152:22, 153:25, 154:13 202-514-9623 [1] - 1:22 2020 [3] - 25:13, 148:24, 149:7 2021 [36] - 1:6, 4:2, 26:13, 52:5, 72:15, 73:20, 77:11, 77:14, 77:16, 77:19, 97:4, 99:6, 100:23, 101:1, 101:2, 101:7, 105:2, 105:23, 111:13, 111:22, 112:3, 112:5, 112:10, 112:18, 112:23, 123:10, 148:8, 148:11, 148:13, 148:15, 148:19, 149:7, 156:23, 160:6 21 [2] - 132:10, 148:8 212-326-3939 [1] - 2:8 216 [1] - 44:23 2208 [1] - 1:21 23 [1] - 57:3 24 [4] - 102:12, 137:18, 149:13, 151:19 24th [1] - 138:9 25 [7] - 23:17, 29:3, 30:8, 30:9, 30:18, 30:20, 30:22 25-million-dollar [2] - 19:16, 20:5 250 [1] - 2:7 28 [3] - 3:3, 129:17, 129:20 28th [1] - 138:9 29 [1] - 59:1 2:46 [1] - 85:8	40 [3] - 49:6, 142:6, 143:6 40-thousand-dollar [1] - 49:8 43.8 [1] - 109:17 438 [1] - 109:22 44 [3] - 105:10, 137:13, 138:2 49-page [1] - 57:7 4:21-CR-09 [1] - 1:3 4th [1] - 26:13
/		5
/s [1] - 167:7		5 [3] - 3:3, 47:7, 151:19 5-million-dollar [1] - 20:21 50 [2] - 95:11, 131:17 502 [1] - 132:5 504 [2] - 131:9, 131:17 515 [1] - 2:12 53 [1] - 3:4 55 [1] - 3:6 58 [3] - 98:5, 103:12, 112:14 5:00 [6] - 84:25, 85:5, 85:12, 85:19, 161:9, 161:13 5:10 [3] - 1:5, 4:3, 166:25 5th [2] - 19:20, 24:10
1		6
1 [4] - 38:9, 134:9, 150:6, 150:15 1,000 [1] - 109:21 1.2 [1] - 112:3 1.5 [3] - 111:19, 111:25, 112:2 100 [2] - 80:22, 152:14 10281 [1] - 2:8 11/20/21 [1] - 167:7 12th [1] - 161:25 134 [5] - 31:11, 34:12, 34:15, 47:7, 48:9 135 [4] - 34:18, 37:1, 37:3 136 [3] - 37:7, 41:6, 41:8 137 [5] - 42:2, 42:18, 43:18, 43:23, 43:25 138 [4] - 44:12, 44:16, 45:18, 45:20 139 [5] - 48:18, 48:22, 50:22, 50:24, 54:10 14 [1] - 24:3 140 [14] - 124:23, 124:25, 125:1, 130:16, 131:18, 131:22, 132:14, 133:3, 133:5, 133:14, 133:18, 134:11, 134:15, 134:25 141 [11] - 125:7, 128:3, 128:15, 128:21, 133:3, 133:6, 133:15, 133:18, 134:18, 134:24, 134:25 142 [14] - 127:25, 128:1, 128:10, 128:18, 128:22, 131:1, 131:18, 132:5, 133:3, 133:6, 134:4, 134:6, 134:7, 134:25 142-A [2] - 135:17, 135:20 142-B [3] - 135:23, 136:4, 136:7 142s [2] - 135:2, 135:4 143 [8] - 133:10, 133:24, 134:4, 134:6, 134:9, 134:21, 134:25, 135:20 15 [1] - 81:15 150 [1] - 1:21 16 [1] - 19:19 16-year-old [2] - 49:3, 49:24		6 [3] - 119:19, 133:9, 137:10 6:00 [1] - 166:17
		7
		70 [1] - 63:16 713-250-5087 [1] - 2:13 717 [1] - 2:3 77002 [2] - 2:4, 2:13 7th [1] - 148:16

8	126:18 add [1] - 36:23	alleged [2] - 27:9, 89:1 allow [6] - 26:25, 31:24, 35:14, 92:1, 92:2, 114:16
8 [1] - 104:13 800 [1] - 58:4 8004 [1] - 2:12 832-239-3694 [1] - 2:4 8:30 [3] - 165:21, 166:16, 166:24	added [4] - 30:1, 32:18, 32:24, 80:3 addition [5] - 10:2, 51:16, 61:15, 61:19, 62:20 address [2] - 15:14, 34:6 addressed [1] - 16:18 addresses [4] - 35:1, 35:6, 36:10, 36:17 adjournment [1] - 166:23 administrative [4] - 21:7, 22:3, 22:13, 57:19 admit [4] - 59:8, 133:3, 135:17, 136:4 admitted [12] - 30:23, 34:16, 37:3, 41:8, 43:25, 45:20, 50:24, 133:6, 134:6, 135:20, 136:7 advance [1] - 77:25 advanced [2] - 86:14, 164:7 advances [1] - 72:6 advantageous [1] - 42:24 adverse [1] - 35:15 advice [5] - 10:4, 11:6, 11:21, 41:14, 41:18 advise [2] - 59:24, 69:16 advised [1] - 147:19 advisors [1] - 45:3 AEBCT [13] - 5:24, 6:2, 6:7, 6:13, 8:3, 11:7, 12:4, 18:20, 19:3, 19:6, 23:24, 27:20, 38:6 affairs [2] - 18:8, 18:9 affect [4] - 82:13, 82:18, 149:1, 149:8 affected [4] - 65:16, 86:2, 163:1, 163:15 affecting [2] - 63:16, 93:24 affects [1] - 65:11 affidavit [2] - 26:13, 26:24 affidavits [3] - 24:22, 26:9, 26:21 afield [1] - 43:23 afternoon [7] - 4:11, 4:12, 55:23, 55:24, 85:4, 90:12, 90:13 AFTERNOON [1] - 1:10 age [5] - 73:21, 87:1, 110:11, 154:25 agencies [1] - 17:7 agents [1] - 12:21 aggregate [1] - 80:4 agree [23] - 15:5, 26:25, 41:4, 90:16, 96:5, 96:16, 96:18, 99:19, 106:19, 113:9, 114:18, 117:2, 120:14, 122:2, 122:7, 122:8, 124:10, 138:20, 142:23, 145:9, 152:11, 154:3, 154:7 agreed [3] - 6:21, 7:8, 116:9 agreement [1] - 53:8 Agronin [6] - 60:10, 136:22, 139:12, 139:15, 143:18, 143:21 agronin [1] - 60:14 ahead [4] - 45:6, 53:24, 84:23, 166:15 airport [2] - 35:2, 54:20 akin [1] - 16:18 Al [1] - 39:13 ALBULA [1] - 8:16 alertness [1] - 86:2	allows [2] - 41:13, 43:9 almost [1] - 163:12 alone [3] - 96:21, 143:8, 147:8 Alzheimer's [45] - 56:16, 57:17, 58:8, 58:20, 58:24, 59:4, 62:3, 62:5, 64:25, 65:1, 65:6, 65:8, 65:24, 68:7, 68:8, 68:17, 69:13, 70:19, 71:3, 75:12, 79:6, 79:14, 80:24, 81:17, 81:22, 84:16, 87:21, 106:21, 106:24, 114:14, 114:16, 114:19, 116:13, 117:3, 120:16, 121:2, 121:8, 121:9, 125:5, 130:18, 132:2, 134:15, 162:5, 162:14, 162:16 Alzheimer's-related [2] - 57:17, 87:21 amalgamation [5] - 124:8, 125:19, 132:7, 134:15, 134:18 amalgamations [6] - 124:10, 125:17, 125:22, 126:24, 131:24, 133:25 Amazon [1] - 16:12 AMERICA [1] - 1:3 amount [1] - 8:15 ample [1] - 85:16 amyloid [60] - 65:3, 70:5, 74:22, 75:1, 79:9, 79:10, 79:12, 79:20, 79:21, 79:22, 80:9, 80:18, 81:1, 81:2, 81:5, 81:8, 81:10, 81:14, 81:16, 106:20, 106:24, 107:2, 107:7, 107:17, 108:10, 113:10, 113:13, 113:14, 113:18, 113:22, 113:23, 114:4, 114:9, 114:13, 114:23, 114:25, 115:23, 116:1, 116:11, 116:13, 117:3, 118:5, 118:10, 118:14, 118:25, 119:12, 119:21, 120:4, 120:6, 120:16, 120:17, 120:20, 121:3, 121:7, 121:13, 121:15, 131:5, 140:20, 162:17, 162:18 analysis [25] - 72:23, 72:24, 73:4, 73:6, 73:7, 74:3, 74:5, 75:2, 75:4, 81:24, 97:5, 99:15, 103:14, 103:15, 103:24, 104:10, 105:24, 110:15, 110:21, 111:8, 111:13, 112:9, 112:17, 123:3 analyzing [1] - 74:9 answer [10] - 40:15, 62:21, 63:3, 92:14, 92:21, 107:19, 115:17, 120:23, 120:24, 160:17 answered [2] - 92:3, 93:13 answering [5] - 39:3, 55:16, 90:22, 92:18, 120:22 answers [1] - 93:9 anytime [1] - 77:23 aortic [1] - 119:5 apartment [1] - 46:19 apologies [1] - 129:11 apologize [3] - 78:9, 132:13, 135:17 APPEARANCES [1] - 1:16 appearing [1] - 63:22 apply [2] - 68:7, 147:2 appointment [4] - 41:11, 41:18, 41:22,
9		
90 [1] - 3:7		
A		
abilities [2] - 156:12, 157:2 ability [8] - 62:21, 82:13, 82:18, 86:24, 91:18, 97:20, 98:12, 154:5 able [12] - 47:7, 66:14, 66:16, 71:13, 82:11, 82:19, 85:2, 117:5, 120:23, 128:1, 164:5 abnormal [1] - 79:13 abnormalities [1] - 126:13 above-entitled [1] - 167:5 aboveboard [1] - 45:24 absolute [2] - 73:15, 153:23 absolutely [5] - 9:9, 20:12, 57:22, 81:4, 154:12 AC [1] - 166:1 academia [1] - 138:21 academic [2] - 23:6, 58:13 accelerate [1] - 87:21 accelerated [1] - 87:2 accelerates [1] - 86:13 acceleration [1] - 86:18 accept [3] - 45:8, 46:10 accepted [3] - 7:12, 58:15, 59:14 accepts [1] - 23:8 access [2] - 87:23, 139:4 accidents [1] - 149:6 accommodation [1] - 55:8 accordance [3] - 35:7, 36:3, 36:18 account [4] - 87:25, 100:3, 159:4, 159:9 accumulates [1] - 107:17 accumulating [3] - 81:14, 107:12, 113:18 accumulation [2] - 65:3, 113:22 accumulations [2] - 79:22, 79:24 accuracy [1] - 158:1 accurate [8] - 63:1, 107:3, 108:5, 109:1, 109:7, 126:5, 132:15, 155:24 accused [1] - 94:21 acquaintances [1] - 155:9 act [1] - 59:17 actions [1] - 69:16 active [2] - 57:16, 70:23 actively [1] - 59:17 activities [3] - 66:12, 66:17, 94:5 activity [2] - 67:11, 121:22 actual [5] - 19:15, 77:4, 78:23, 90:4,		

<p>42:4 appreciate [5] - 6:11, 85:20, 97:13, 122:17, 166:20 approach [10] - 42:16, 42:17, 44:13, 44:14, 48:19, 48:20, 104:18, 104:20, 127:16, 127:18 appropriate [2] - 6:17, 93:9 approval [1] - 46:21 approve [2] - 46:16, 46:24 approximate [2] - 108:22, 151:9 area [4] - 4:21, 4:25, 125:3 areas [4] - 70:25, 99:8, 109:13, 121:23 argue [1] - 9:20 Arps [1] - 11:11 arrows [1] - 21:11 article [3] - 138:25, 139:1, 139:3 articles [1] - 126:25 artifact [1] - 103:18 artifacts [1] - 73:10 Asbill [1] - 12:10 aside [2] - 10:2, 144:2 aspect [1] - 75:10 aspects [1] - 74:10 Aspen [1] - 4:21 assault [1] - 148:23 asserted [1] - 26:23 assess [4] - 6:24, 17:18, 60:6, 158:8 assessed [3] - 6:24, 7:2, 62:1 assessing [3] - 92:8, 100:20, 158:15 assessment [12] - 60:1, 61:18, 72:17, 75:10, 90:19, 114:16, 123:5, 123:8, 158:11, 158:23, 159:1, 160:21 assets [3] - 37:22, 41:19, 45:2 assistants [1] - 21:18 assisted [1] - 2:16 associate [1] - 151:15 associated [12] - 46:17, 52:8, 64:15, 65:7, 67:12, 72:19, 75:22, 80:24, 81:9, 86:17, 86:19, 106:14 associates [2] - 156:9, 156:12 association [1] - 64:18 assume [2] - 116:24, 157:6 assumed [1] - 5:23 atrophy [7] - 72:18, 72:22, 75:14, 75:17, 75:21, 75:24 attend [2] - 47:20, 48:2 attention [8] - 14:11, 14:16, 101:2, 104:12, 128:9, 149:16, 149:20, 151:2 attorney [1] - 10:3 attorneys [5] - 10:4, 11:6, 24:21, 51:17, 154:5 audit [7] - 18:1, 18:4, 18:8, 18:9, 18:11, 18:20, 19:5 August [10] - 12:14, 71:10, 115:20, 115:23, 117:17, 119:19, 122:5, 134:1, 134:22, 160:6 Australia [1] - 45:15 author [2] - 31:17, 131:5 author's [1] - 131:4</p>	<p>autonomic [1] - 63:19 available [6] - 15:10, 16:1, 16:10, 16:23, 110:22, 113:7 average [4] - 113:22, 129:25, 130:9, 132:9 aware [7] - 17:24, 83:5, 83:11, 83:16, 86:3, 152:22, 154:19 axis [1] - 108:14</p> <p style="text-align: center;">B</p> <p>bad [7] - 18:6, 99:24, 101:20, 121:24, 153:12, 159:25, 166:18 badgering [1] - 92:19 badly [1] - 45:9 Baker [2] - 11:13, 12:3 bank [3] - 28:1, 33:7, 33:14 bankers [1] - 45:3 Barlow [3] - 57:14, 58:2, 58:6 Barras [5] - 156:16, 156:18, 156:22, 157:1, 157:13 barrier [2] - 87:18, 87:19 Basalt [1] - 4:24 based [15] - 6:23, 51:14, 62:15, 64:2, 69:10, 94:3, 94:4, 94:8, 94:13, 106:7, 111:6, 113:21, 123:5, 126:15, 132:23 basic [2] - 66:17, 94:5 basis [10] - 5:25, 6:4, 6:19, 7:2, 64:20, 66:3, 92:17, 100:20, 110:18, 113:17 Bates [1] - 44:23 battery [1] - 152:23 Baylor [5] - 19:10, 19:11, 20:3, 20:4, 22:11 bear [1] - 127:11 became [1] - 33:21 become [2] - 44:2, 80:2 BEFORE [1] - 1:11 began [1] - 44:2 begin [1] - 13:9 behaved [1] - 17:15 behavior [2] - 163:18, 163:20 behind [2] - 32:20, 163:13 belief [7] - 26:6, 26:7, 26:8, 28:17, 29:16, 34:11 Belize [4] - 8:24, 9:1, 9:5, 9:6 Bellevue [3] - 89:6, 89:11, 94:20 Benedek [3] - 11:22, 11:23 beneficiaries [2] - 7:14, 8:10 beneficiary [1] - 49:18 benefit [2] - 77:24, 93:11 benefited [1] - 24:14 Bermuda [21] - 8:24, 9:5, 9:10, 9:14, 9:18, 24:9, 26:9, 28:20, 28:23, 33:6, 33:9, 33:13, 34:5, 34:22, 35:1, 40:9, 52:19, 52:21, 53:3, 53:4 Bernice [1] - 140:7 best [9] - 42:14, 54:22, 76:12, 79:7, 80:8, 90:22, 93:7, 93:9, 118:16 Best [1] - 16:11 beta [2] - 79:22, 81:14</p>	<p>better [11] - 9:21, 16:8, 47:3, 58:19, 105:6, 114:22, 116:10, 117:2, 120:15, 121:2, 123:18 between [12] - 37:8, 48:24, 62:12, 71:9, 77:14, 77:16, 96:24, 101:2, 101:5, 122:4, 123:8, 145:10 beyond [2] - 69:15, 85:19 big [2] - 104:14, 104:21 bigger [2] - 109:22, 109:24 biggest [1] - 100:3 bill [2] - 61:1, 144:3 billed [5] - 141:13, 141:18, 141:21, 142:7, 142:18 billing [2] - 142:20, 144:3 billion [2] - 38:9, 48:13 binder [5] - 19:22, 104:2, 104:14, 104:21, 150:9 biological [3] - 95:22, 95:25, 108:6 biology [1] - 21:15 bit [15] - 8:19, 14:8, 37:5, 39:22, 42:11, 45:6, 45:22, 94:19, 96:3, 96:23, 126:17, 136:12, 138:18, 146:24, 165:22 bits [3] - 10:21, 30:1, 32:18 black [2] - 128:5, 130:22 blood [1] - 87:18 blood-brain [1] - 87:18 blown [2] - 131:12, 131:19 blue [2] - 121:19, 121:22 board [2] - 38:20, 57:23 board-certified [1] - 57:23 boarding [2] - 49:3, 49:24 boat [7] - 8:3, 8:6, 8:8, 8:11, 39:20, 39:21, 40:25 Bob [2] - 15:17, 32:8 bodies [2] - 62:11, 62:14 body [9] - 58:10, 58:22, 62:2, 62:5, 62:7, 62:8, 62:9, 65:23, 162:6 bone [1] - 108:12 border [2] - 36:12, 36:13 Boris [1] - 1:19 boris.bourget@usdoj.gov [1] - 1:24 bottom [8] - 37:13, 125:10, 125:15, 125:16, 126:2, 150:18, 153:25, 154:24 Botts [2] - 11:13, 12:3 Bourget [1] - 1:19 bouts [1] - 87:5 boy [1] - 136:8 bradykinesia [1] - 63:14 brain [61] - 21:1, 21:22, 65:4, 70:21, 70:22, 71:1, 71:15, 71:23, 72:3, 72:6, 72:8, 72:10, 72:12, 72:15, 72:21, 73:20, 74:10, 75:5, 75:25, 76:2, 76:11, 76:15, 76:16, 76:19, 76:21, 78:7, 79:23, 81:14, 84:6, 84:11, 84:14, 84:15, 84:17, 86:24, 86:25, 87:10, 87:14, 87:18, 96:13, 97:22, 102:16, 102:18, 103:14, 105:25, 106:16, 106:20, 107:7, 107:12, 109:14, 109:24, 113:19, 114:20, 121:19,</p>
---	---	---

<p>121:22, 124:1, 124:12, 126:10, 162:11, 162:16, 163:14</p> <p>Brandon [1] - 11:11</p> <p>break [6] - 79:18, 84:22, 84:24, 85:4, 85:12, 107:5</p> <p>breakdown [1] - 87:18</p> <p>brief [2] - 53:18, 138:15</p> <p>bring [2] - 104:14, 120:8</p> <p>broad [1] - 40:15</p> <p>broadly [1] - 159:10</p> <p>BROCKMAN [1] - 1:6</p> <p>Brockman [121] - 5:24, 6:3, 6:16, 7:8, 7:13, 7:17, 8:7, 8:9, 9:16, 10:3, 12:4, 13:1, 13:3, 13:9, 14:4, 14:13, 15:15, 16:25, 17:6, 17:11, 17:21, 17:25, 18:2, 18:10, 18:15, 23:24, 24:2, 24:6, 24:25, 25:3, 25:13, 25:19, 25:23, 26:2, 27:8, 27:13, 27:17, 28:1, 29:9, 30:6, 31:1, 31:17, 32:1, 34:19, 35:8, 36:1, 37:8, 37:14, 37:17, 38:8, 38:14, 38:15, 38:23, 40:8, 41:2, 41:22, 41:24, 44:7, 44:9, 44:17, 44:25, 45:11, 45:13, 45:24, 46:2, 46:6, 46:13, 46:16, 46:24, 47:9, 47:12, 48:2, 48:11, 48:14, 48:24, 49:12, 50:17, 54:10, 59:18, 61:11, 61:16, 61:20, 62:1, 62:21, 63:4, 63:9, 64:6, 65:19, 66:1, 66:4, 69:19, 80:9, 82:5, 82:21, 83:1, 83:5, 83:16, 86:4, 87:4, 88:13, 88:18, 92:8, 100:7, 101:7, 101:17, 122:4, 130:4, 145:20, 147:12, 148:9, 148:20, 148:23, 151:1, 153:12, 153:24, 158:15</p> <p>Brockman's [31] - 12:22, 25:9, 33:3, 36:12, 47:20, 48:4, 48:7, 49:7, 72:8, 73:19, 79:3, 81:13, 81:25, 83:22, 86:9, 90:1, 91:9, 109:17, 109:21, 110:16, 112:22, 113:19, 123:19, 126:10, 133:25, 148:5, 154:4, 156:11, 158:4, 158:24, 162:16</p> <p>broken [1] - 153:3</p> <p>brought [4] - 8:24, 26:4, 35:8, 120:11</p> <p>building [1] - 166:2</p> <p>bunch [1] - 45:3</p> <p>bunk [2] - 28:6, 28:8</p> <p>burden [1] - 80:7</p> <p>business [1] - 14:19</p> <p>busy [1] - 61:4</p> <p>button [1] - 98:20</p> <p>buy [3] - 16:11, 45:13, 45:14</p> <p>Buy [1] - 16:11</p> <p>BY [46] - 4:10, 27:6, 29:8, 30:24, 31:25, 35:20, 37:4, 41:9, 42:22, 44:1, 44:15, 45:21, 48:23, 50:25, 53:21, 54:2, 55:22, 59:16, 74:2, 78:5, 78:12, 85:23, 90:11, 92:5, 92:23, 97:19, 98:23, 102:13, 104:5, 105:1, 105:19, 111:3, 115:16, 121:4, 127:20, 130:14, 130:24, 133:7, 134:13, 135:9, 135:21, 136:10, 158:22, 159:22, 161:22, 164:19</p>	<p style="text-align: center;">C</p> <p>Cabot [1] - 45:8</p> <p>cannot [2] - 96:20, 111:12</p> <p>capabilities [2] - 90:1, 91:9</p> <p>capability [3] - 86:25, 87:11, 92:9</p> <p>capacity [2] - 24:2, 63:1</p> <p>cardiologist [1] - 48:4</p> <p>care [1] - 88:6</p> <p>caregiver [3] - 61:23, 66:18, 94:11</p> <p>caregivers [1] - 159:13</p> <p>Carlos [1] - 10:11</p> <p>Carol [1] - 12:10</p> <p>carry [1] - 44:25</p> <p>case [44] - 28:1, 51:18, 52:7, 52:9, 61:8, 61:14, 63:6, 69:24, 80:10, 82:6, 89:2, 89:22, 90:17, 91:1, 91:21, 96:4, 96:19, 97:3, 99:24, 104:7, 113:6, 114:5, 117:7, 121:17, 122:25, 125:22, 136:16, 137:2, 138:14, 142:6, 142:15, 144:13, 148:2, 150:7, 151:16, 154:17, 156:13, 156:14, 157:15, 159:24, 160:3, 160:15, 160:18, 161:4</p> <p>CASE [4] - 4:5, 29:5, 85:7, 85:9</p> <p>cases [2] - 59:25, 63:17</p> <p>casual [1] - 84:8</p> <p>causes [2] - 58:20, 72:13</p> <p>causing [1] - 106:9</p> <p>cells [1] - 78:20</p> <p>cellular [1] - 21:15</p> <p>cent [1] - 27:19</p> <p>center [6] - 56:16, 56:17, 56:22, 57:14, 58:2, 58:7</p> <p>centers [1] - 58:1</p> <p>central [1] - 87:19</p> <p>Centre [3] - 47:24, 47:25, 48:2</p> <p>CEO [3] - 39:2, 83:12, 156:20</p> <p>CEO's [1] - 37:25</p> <p>cerebellum [1] - 163:14</p> <p>cerebral [1] - 72:18</p> <p>certain [6] - 8:22, 17:6, 33:15, 69:23, 93:21, 166:4</p> <p>certainly [10] - 18:4, 53:9, 53:11, 73:1, 73:2, 73:8, 74:21, 82:2, 82:10, 88:2</p> <p>certainty [4] - 69:21, 118:20, 150:23, 152:14</p> <p>CERTIFICATE [1] - 167:1</p> <p>certified [1] - 57:23</p> <p>certify [1] - 167:3</p> <p>chair [3] - 20:21, 21:19, 56:23</p> <p>challenge [1] - 7:10</p> <p>Chamberlain [2] - 10:12, 10:15</p> <p>chance [1] - 103:3</p> <p>change [15] - 42:24, 71:10, 71:12, 71:19, 71:20, 73:12, 75:9, 103:6, 105:22, 142:8, 158:23, 159:1, 159:2, 164:22</p> <p>changed [2] - 43:11, 43:17</p> <p>changes [7] - 23:8, 75:11, 95:22, 95:25,</p>	<p>97:22, 98:1, 108:6</p> <p>characterized [1] - 65:3</p> <p>charge [1] - 60:18</p> <p>charges [1] - 27:14</p> <p>charitable [7] - 7:25, 47:13, 47:14, 48:11, 49:2, 49:14, 49:23</p> <p>charities [2] - 54:11, 54:12</p> <p>charity [1] - 47:6</p> <p>chartered [1] - 39:13</p> <p>charterers [2] - 39:12, 41:3</p> <p>chartering [1] - 39:11</p> <p>charters [2] - 39:18, 39:19</p> <p>chemically [1] - 80:2</p> <p>chemicals [1] - 87:17</p> <p>Christopher [1] - 1:19</p> <p>christopher.magnani@usdoj.gov [1] - 1:24</p> <p>circuit [1] - 57:1</p> <p>circumstances [1] - 33:15</p> <p>cite [2] - 109:1, 138:8</p> <p>city [1] - 89:7</p> <p>City [1] - 89:8</p> <p>civil [3] - 53:9, 53:11, 53:13</p> <p>clarification [1] - 6:10</p> <p>clarify [3] - 40:11, 103:1, 121:6</p> <p>clarifying [1] - 146:24</p> <p>clear [15] - 12:15, 19:11, 20:2, 64:22, 64:24, 72:10, 83:3, 89:21, 102:15, 103:9, 117:12, 122:14, 142:19, 160:15, 160:18</p> <p>clearly [5] - 70:17, 79:11, 79:13, 80:13, 80:16</p> <p>clinic [1] - 95:6</p> <p>clinical [19] - 55:5, 64:4, 64:7, 70:11, 70:14, 87:24, 88:13, 136:14, 136:23, 136:24, 139:16, 139:21, 139:23, 140:17, 146:14, 155:17, 155:20, 156:8, 157:6</p> <p>clinically [1] - 71:17</p> <p>clinician [1] - 57:13</p> <p>clinicians [1] - 103:21</p> <p>clock [1] - 161:10</p> <p>close [3] - 19:24, 23:22, 155:9</p> <p>closely [1] - 24:5</p> <p>cluster [3] - 106:20, 106:24, 107:4</p> <p>cognition [2] - 85:25, 86:2</p> <p>Cognitive [1] - 129:9</p> <p>cognitive [59] - 56:23, 58:9, 59:10, 61:18, 62:16, 63:16, 64:14, 64:18, 65:11, 65:12, 66:7, 66:19, 66:21, 67:1, 69:15, 69:19, 69:22, 75:23, 76:12, 80:8, 81:2, 81:9, 82:9, 86:16, 86:23, 87:2, 87:6, 87:8, 89:24, 90:17, 90:20, 90:25, 91:17, 91:19, 93:24, 94:14, 95:4, 95:23, 99:20, 100:4, 100:8, 100:13, 100:15, 100:20, 101:15, 101:18, 107:8, 107:23, 108:11, 114:1, 126:19, 126:21, 151:25, 152:7, 153:15, 154:4, 154:8, 156:12, 157:2</p> <p>cognitively [2] - 110:3, 110:12</p>
---	--	--

collaborate [1] - 60:8
collateral [10] - 61:21, 66:7, 146:7, 155:10, 155:12, 155:14, 155:18, 157:5, 161:1
colleagues [1] - 117:6
College [5] - 19:11, 20:4, 47:24, 47:25, 48:2
colleges [1] - 23:3
Colorado [14] - 4:15, 4:25, 5:3, 5:10, 5:13, 5:15, 5:17, 7:15, 7:18, 7:19, 7:24, 8:4, 12:7, 12:9
combination [2] - 79:16, 80:21
combine [1] - 80:18
combined [2] - 81:20, 112:8
comfortable [1] - 95:15
coming [3] - 41:3, 141:24, 155:20
commercially [4] - 15:10, 16:1, 16:10, 16:23
committed [2] - 24:24, 40:11
common [9] - 23:5, 23:14, 58:8, 63:18, 65:2, 65:23, 113:19, 156:8
commonly [1] - 74:11
communicate [4] - 82:6, 82:11, 82:13, 82:18
communicating [1] - 16:17
communication [3] - 14:25, 15:6, 20:3
comorbidity [1] - 65:23
companies [6] - 5:9, 5:10, 5:17, 5:19, 38:19, 51:8
Company [2] - 24:25, 26:11
company [3] - 5:5, 5:13, 30:6
compare [12] - 71:25, 77:11, 110:7, 111:12, 111:22, 112:10, 112:18, 124:6, 126:10, 129:17, 132:22, 133:14
compared [1] - 129:15
compares [2] - 124:4, 134:21
comparing [11] - 72:2, 72:9, 75:8, 97:3, 97:8, 110:10, 112:17, 121:16, 123:19, 133:24, 159:17
comparison [4] - 75:5, 77:13, 99:5, 122:9
compensation [7] - 37:14, 37:25, 38:9, 38:18, 39:2, 44:9, 44:17
compensatory [1] - 76:2
competence [2] - 91:8, 91:11
competency [7] - 13:16, 30:12, 90:14, 90:18, 94:22, 94:25, 95:5
COMPETENCY [1] - 1:9
competent [2] - 89:15, 89:16
complaining [1] - 95:10
complete [4] - 119:21, 120:23, 128:13, 131:14
completely [1] - 144:19
complicated [1] - 154:11
complications [1] - 111:20
components [3] - 153:4, 153:6, 153:22
comprehend [1] - 23:4
computer [3] - 2:16, 13:18, 16:7
computer-assisted [1] - 2:16

computers [1] - 36:2
concentration [1] - 59:9
concept [1] - 108:20
concern [2] - 44:8, 44:10
concerned [8] - 29:17, 35:10, 35:21, 35:25, 36:5, 44:2, 52:18, 52:23
concerning [2] - 18:20, 63:4
concerns [3] - 36:12, 53:1, 157:2
conclude [1] - 88:17
conclusion [3] - 24:19, 62:25, 164:22
conclusions [3] - 61:25, 142:14, 155:8
conclusively [3] - 96:6, 96:14, 96:20
concoct [1] - 51:4
concur [1] - 32:12
concurs [1] - 32:6
conditions [1] - 62:18
conduct [9] - 24:15, 25:4, 53:12, 61:21, 75:4, 88:12, 144:4, 162:22, 164:5
conducted [2] - 61:16, 152:23
conducting [1] - 61:20
confabulation [2] - 82:22, 82:25
confer [2] - 115:8, 159:21
confident [2] - 141:11, 141:14
configured [1] - 112:5
confirm [3] - 152:12, 152:18, 162:15
confirmation [1] - 64:23
confirmed [4] - 64:7, 152:1, 152:4, 152:16
conformational [1] - 56:19
confused [3] - 39:22, 66:15, 103:10
confusing [5] - 93:12, 106:12, 110:5, 122:23, 124:21
confusion [1] - 135:4
conjunction [1] - 80:19
connected [1] - 8:15
connection [13] - 10:5, 11:7, 13:8, 19:5, 21:8, 23:24, 26:10, 26:14, 47:17, 58:12, 60:16, 61:7, 61:24
consent [3] - 11:3, 51:2, 51:14
consider [10] - 49:23, 88:13, 91:10, 136:19, 136:22, 157:13, 157:18, 157:19, 157:22, 158:15
considered [2] - 138:2, 157:17
considering [1] - 159:2
consistency [3] - 88:21, 153:15, 158:1
consistent [20] - 7:4, 7:25, 66:19, 67:1, 67:2, 70:18, 79:4, 82:2, 83:24, 108:9, 122:21, 125:4, 145:4, 145:7, 146:3, 146:8, 152:1, 153:20, 154:24, 158:5
consulting [1] - 89:11
contact [1] - 36:24
contained [2] - 34:4, 36:17
containing [1] - 33:20
contains [1] - 20:17
content [1] - 142:24
contention [1] - 108:12
context [9] - 41:1, 89:4, 100:9, 100:11, 102:24, 119:1, 126:21, 151:16
continually [1] - 56:17

continuation [1] - 164:9
continue [4] - 85:22, 146:19, 161:8, 166:8
continued [1] - 69:9
CONTINUED [1] - 4:9
continues [1] - 137:23
continuing [1] - 164:12
continuously [1] - 56:20
contr [1] - 45:16
contributions [1] - 49:15
control [3] - 49:12, 75:6, 154:8
conversation [13] - 12:25, 13:9, 29:25, 30:1, 30:2, 30:3, 31:8, 32:5, 32:10, 32:17, 32:24, 120:8
conversations [2] - 10:9, 138:15
convince [1] - 117:5
copy [5] - 32:8, 42:18, 44:16, 48:21, 128:5
core [3] - 84:3, 84:13, 84:16
Corey [1] - 1:18
corey.smith@usdoj.gov [1] - 1:23
Cormier [1] - 11:13
corporate [2] - 39:3, 39:4
correct [176] - 4:21, 4:25, 5:1, 5:2, 5:4, 5:10, 5:14, 5:22, 5:25, 6:1, 6:5, 6:15, 6:19, 6:20, 7:16, 8:1, 8:5, 8:11, 8:12, 8:25, 9:9, 9:25, 10:13, 11:10, 12:19, 12:23, 14:17, 14:20, 17:8, 17:20, 18:13, 19:4, 20:8, 21:9, 21:15, 22:18, 23:25, 24:12, 25:14, 31:7, 40:6, 43:5, 52:14, 57:10, 59:22, 62:7, 63:10, 63:11, 66:2, 68:4, 69:12, 69:14, 73:23, 75:18, 76:7, 77:18, 77:20, 78:15, 81:18, 81:19, 82:2, 82:16, 90:14, 90:15, 93:19, 93:21, 93:22, 93:25, 94:1, 94:4, 94:6, 94:9, 94:10, 94:12, 94:14, 94:15, 94:18, 95:14, 95:24, 96:2, 96:11, 96:15, 96:22, 97:2, 97:6, 97:11, 98:2, 99:11, 99:13, 100:6, 101:9, 101:12, 103:8, 106:15, 107:11, 107:14, 107:18, 107:20, 107:22, 107:24, 109:15, 110:13, 112:4, 112:7, 112:21, 113:4, 113:25, 114:3, 114:21, 114:24, 115:22, 116:3, 116:5, 116:7, 116:8, 116:12, 116:14, 116:15, 117:16, 117:18, 117:21, 123:4, 124:5, 125:21, 126:1, 126:20, 126:23, 129:19, 129:21, 129:24, 130:2, 130:11, 130:17, 132:1, 132:4, 133:21, 134:19, 136:18, 138:3, 138:11, 139:14, 139:17, 140:6, 141:13, 142:13, 142:22, 143:10, 143:12, 143:14, 143:17, 143:19, 144:1, 144:20, 145:2, 146:3, 146:13, 147:6, 147:9, 147:11, 147:18, 147:21, 152:20, 153:7, 153:19, 154:6, 154:21, 156:6, 157:10, 160:13, 162:23, 163:19, 164:25, 167:4
correlate [3] - 79:6, 79:8, 79:16
correlates [4] - 71:1, 76:12, 80:7, 81:17

corresponding [2] - 22:3, 22:13
corroborated [1] - 64:4
corroborating [2] - 88:22, 165:2
Counsel [1] - 85:11
counsel [7] - 4:7, 10:17, 82:6, 91:19, 115:8, 159:21, 165:17
couple [4] - 11:25, 59:5, 78:1, 165:11
course [3] - 53:2, 107:15, 108:6
Court [2] - 91:9, 132:6
COURT [100] - 1:1, 2:11, 4:6, 26:24, 27:3, 28:13, 30:9, 30:15, 30:20, 30:22, 31:24, 34:13, 34:15, 35:14, 37:3, 41:8, 42:17, 43:25, 44:14, 45:20, 48:20, 50:24, 53:17, 53:19, 54:16, 54:19, 54:22, 54:25, 55:6, 55:10, 55:14, 55:18, 59:11, 59:14, 73:16, 73:19, 74:1, 77:7, 77:10, 77:15, 77:18, 77:21, 78:2, 84:23, 85:2, 85:10, 85:18, 85:22, 88:24, 89:9, 89:13, 89:20, 90:2, 90:5, 90:8, 91:3, 91:6, 91:15, 91:22, 92:1, 92:17, 92:20, 98:10, 98:14, 98:16, 102:7, 104:20, 110:18, 110:23, 111:2, 115:11, 120:25, 127:18, 130:13, 133:5, 134:6, 134:10, 134:24, 135:5, 135:8, 135:19, 136:6, 136:9, 158:21, 161:8, 161:12, 163:25, 164:2, 164:14, 164:17, 165:5, 165:7, 165:10, 165:15, 165:17, 165:20, 166:12, 166:21, 166:23, 167:1
court [2] - 26:22, 129:11
Court's [2] - 130:12, 164:16
courtesy [1] - 42:21
courtroom [2] - 63:5, 97:13
courts [1] - 26:9
cover [1] - 13:10
coverage [1] - 88:5
covered [1] - 65:17
Cox [3] - 11:15, 11:18, 18:14
crack [1] - 143:24
crap [4] - 28:2, 28:3, 28:7, 28:8
create [1] - 39:18
created [3] - 32:16, 33:22, 111:17
creating [3] - 32:22, 32:23, 33:19
crime [4] - 17:23, 39:25, 40:1, 40:12
criminal [12] - 24:15, 25:4, 27:9, 28:24, 52:19, 52:23, 89:4, 89:16, 94:20, 94:21, 94:24, 95:9
criminals [1] - 95:4
critical [2] - 76:11, 77:4
Cross [1] - 3:7
CROSS [1] - 90:10
cross [8] - 3:3, 4:9, 35:17, 85:16, 88:22, 90:8, 93:4, 163:25
cross-examination [4] - 4:9, 90:8, 93:4, 163:25
CROSS-EXAMINATION [1] - 90:10
cross-examine [1] - 35:17
cross-examiners [1] - 88:22
crossing [3] - 36:12, 36:13
CRR [2] - 2:12, 167:8

CSR [1] - 2:12
current [3] - 24:21, 72:16, 109:5
customs [4] - 35:5, 35:12, 35:23, 36:10
cut [2] - 45:7, 92:10
CV [2] - 57:4, 139:25
cytokines [3] - 87:16, 87:20, 87:22

D

daily [5] - 66:10, 66:12, 66:17, 67:11, 94:5
damage [5] - 84:18, 87:14, 106:5, 155:10, 155:13
dangerous [2] - 68:21, 69:3
Darby [8] - 108:1, 116:6, 117:15, 117:22, 124:15, 133:1, 133:9, 143:11
dark [1] - 16:13
data [3] - 81:16, 103:17, 153:15
date [4] - 19:14, 151:9, 159:24
DATE [1] - 167:7
dated [1] - 19:20
dates [1] - 62:22
DaTscan [3] - 64:6, 96:10, 96:12
DAY [1] - 1:13
days [8] - 143:15, 143:22, 144:12, 144:15, 154:17, 154:20, 155:2
DC [1] - 1:22
de [1] - 135:6
de-mark [1] - 135:6
dead [1] - 29:25
deal [4] - 32:18, 32:21, 34:2, 115:11
dear [1] - 15:16
death [5] - 31:9, 32:6, 41:20, 43:10, 80:7
Deaton [5] - 38:16, 38:17, 38:23, 39:13, 40:22
December [2] - 25:17, 31:15
decide [2] - 49:14, 114:11
decided [3] - 116:4, 116:20, 119:25
deciding [1] - 47:12
decision [5] - 7:10, 9:17, 116:21, 118:5, 120:3
decision-making [1] - 120:3
decisionmaking [1] - 116:25
decisions [1] - 82:20
decline [8] - 86:14, 86:16, 87:1, 95:23, 107:8, 107:23, 108:11
declines [1] - 86:25
deceased [1] - 71:2
deep [3] - 17:12, 17:13, 21:22
defendant [5] - 93:17, 94:4, 156:19, 157:3, 159:6
DEFENDANT [1] - 2:1
Defendant [1] - 114:19
defendant's [8] - 71:22, 90:17, 90:24, 105:24, 151:15, 156:19, 157:2, 157:19
defendants [3] - 94:21, 94:25, 95:9
defense [13] - 57:2, 98:5, 98:11, 102:12, 103:11, 104:2, 104:13, 112:13, 137:18, 149:13, 150:6, 150:14, 161:24

deficits [4] - 82:24, 88:8, 153:9, 154:4
definitely [3] - 122:12, 134:8, 141:2
definition [1] - 145:13
definitionally [1] - 93:23
degeneration [1] - 102:15
degree [9] - 66:5, 66:6, 67:10, 67:13, 73:8, 82:9, 114:20, 121:2, 126:14
delete [2] - 35:22, 36:20
deleting [2] - 34:25, 35:11
delirium [14] - 85:24, 86:5, 86:7, 86:8, 86:10, 86:12, 86:13, 86:21, 87:5, 87:9, 87:13, 101:11, 101:13, 101:16
demarcation [1] - 145:16
demarcations [1] - 145:10
demented [4] - 132:15, 146:9, 146:12, 158:6
dementia [87] - 58:10, 58:22, 62:2, 62:3, 62:4, 62:7, 62:8, 62:9, 62:11, 62:13, 64:16, 64:21, 64:24, 65:23, 66:1, 66:4, 66:11, 67:5, 67:7, 67:9, 67:10, 67:25, 68:3, 68:4, 68:13, 68:20, 69:13, 69:14, 69:16, 71:4, 75:22, 79:4, 79:17, 80:25, 81:12, 82:1, 82:4, 83:17, 83:23, 84:2, 93:18, 93:23, 94:2, 108:7, 109:4, 116:14, 122:21, 122:25, 123:16, 123:19, 123:23, 123:25, 124:4, 124:6, 124:8, 124:12, 125:19, 130:7, 145:4, 145:5, 145:7, 145:14, 146:3, 146:7, 146:8, 146:18, 146:20, 146:21, 146:22, 147:2, 152:1, 152:7, 152:12, 152:18, 153:8, 155:23, 159:13, 160:16, 160:18, 162:6, 162:7, 162:22, 164:10, 164:12
Dementia [2] - 125:25, 129:9
dementias [1] - 71:4
dementing [3] - 86:13, 86:18, 163:7
demonstrate [1] - 39:12
demonstrating [1] - 108:20
denies [2] - 50:4, 50:6
Denney [1] - 143:15
Department [5] - 1:20, 25:7, 25:18, 25:22, 26:1
dependent [3] - 66:12, 73:9, 94:5
depiction [2] - 108:5, 132:15
deploy [1] - 22:20
deployed [1] - 23:17
deposition [5] - 83:18, 145:3, 154:13, 156:23, 157:1
depositions [5] - 83:5, 83:9, 144:13, 144:16, 154:21
depression [3] - 63:18, 65:21, 65:22
describe [6] - 58:17, 69:21, 100:17, 155:7, 158:5, 159:13
described [5] - 4:24, 68:6, 107:16, 140:19, 162:21
describing [3] - 34:22, 69:11, 138:21
description [3] - 158:4, 159:11, 159:12
despite [2] - 84:7, 84:20
destroy [1] - 13:12
destroyed [2] - 42:25, 43:13

destroying ^[1] - 13:18
details ^[2] - 119:8, 141:9
deteriorate ^[1] - 163:4
determination ^[4] - 64:4, 89:15, 91:10, 155:21
determine ^[1] - 37:24
determining ^[2] - 37:22, 90:20
develop ^[1] - 13:15
diagnose ^[3] - 65:21, 96:14, 117:3
diagnosed ^[13] - 63:9, 65:18, 65:25, 67:8, 93:17, 96:6, 96:20, 130:4, 148:9, 148:12, 148:14, 148:17, 148:18
diagnoses ^[3] - 62:20, 63:8, 126:11
diagnosis ^[12] - 64:1, 64:3, 64:20, 64:23, 66:3, 66:11, 67:18, 68:16, 94:3, 96:10, 114:14, 122:24
diagnostic ^[3] - 59:5, 113:24, 114:1
diagnostically ^[1] - 71:6
dictated ^[1] - 119:11
dictation ^[1] - 119:2
died ^[2] - 31:6, 33:24
Dietz ^[2] - 143:15, 158:25
difference ^[4] - 62:12, 96:24, 100:4, 123:8
differences ^[2] - 99:19, 122:18
different ^[41] - 8:6, 8:23, 23:13, 42:12, 42:25, 57:11, 57:25, 60:5, 61:6, 67:4, 70:1, 72:14, 74:10, 76:1, 93:5, 95:18, 95:21, 97:21, 98:1, 99:20, 99:21, 100:1, 100:9, 102:23, 103:23, 105:10, 107:10, 108:6, 109:13, 111:17, 121:9, 121:13, 129:14, 133:20, 138:21, 139:12, 153:8, 153:9, 153:22, 157:11, 166:2
Differentiate ^[1] - 129:9
difficult ^[4] - 68:24, 78:14, 158:8, 166:7
difficulty ^[1] - 66:15
Direct ^[1] - 3:6
direct ^[16] - 4:13, 14:11, 20:6, 35:17, 41:19, 56:19, 57:18, 93:5, 93:20, 99:16, 100:19, 104:12, 138:17, 144:21, 146:2, 153:14
DIRECT ^[1] - 55:21
directing ^[1] - 128:9
direction ^[7] - 23:16, 33:3, 36:1, 43:9, 47:14, 49:19, 49:21
director ^[7] - 5:5, 30:6, 38:12, 38:15, 56:15, 56:22, 57:14
directors ^[2] - 38:12, 38:21
disability ^[1] - 88:4
disagree ^[1] - 24:18
discuss ^[1] - 118:9
discussed ^[5] - 13:3, 114:10, 114:15, 118:6, 118:10
discussing ^[1] - 140:19
discussion ^[3] - 138:24, 140:21, 141:3
discussions ^[5] - 18:4, 19:12, 139:2, 140:23, 140:25
Disease ^[1] - 129:10
disease ^[60] - 56:16, 58:8, 58:10, 58:20,

58:22, 58:24, 59:5, 62:2, 62:3, 62:5, 62:6, 62:10, 62:13, 62:17, 63:10, 63:12, 63:21, 64:3, 64:8, 64:15, 64:19, 64:21, 64:22, 64:25, 65:1, 65:6, 65:8, 65:11, 65:24, 68:13, 69:13, 70:19, 71:3, 72:6, 75:12, 79:6, 79:14, 81:22, 84:16, 96:10, 96:14, 114:14, 114:16, 114:19, 116:14, 117:3, 120:16, 121:8, 125:5, 125:23, 132:3, 148:3, 162:5, 162:6, 162:15, 163:4, 164:7
diseases ^[8] - 65:18, 70:25, 89:24, 96:6, 96:16, 96:18, 121:8, 163:2
disorder ^[2] - 63:13, 65:2
disorders ^[8] - 56:19, 58:11, 58:21, 59:10, 64:11, 75:13, 76:14, 163:16
disorganized ^[1] - 127:11
disorienting ^[1] - 128:20
dispute ^[1] - 96:19
disputed ^[1] - 90:25
distinction ^[1] - 138:24
distract ^[1] - 102:10
distribution ^[6] - 71:5, 75:14, 79:6, 79:14, 109:23, 126:13
DISTRICT ^[3] - 1:1, 1:1, 1:12
distrust ^[4] - 17:6, 17:14, 17:22, 18:1
division ^[1] - 62:17
DIVISION ^[1] - 1:2
Division ^[1] - 1:20
divorce ^[3] - 20:8, 29:14, 29:18
Doctor ^[11] - 88:24, 124:20, 125:1, 125:8, 127:21, 127:23, 127:25, 128:22, 129:3, 130:3, 130:15
doctor ^[43] - 55:10, 55:23, 56:4, 59:17, 90:12, 92:6, 92:10, 98:24, 104:13, 105:5, 105:20, 108:3, 112:14, 120:14, 120:18, 131:2, 133:10, 133:13, 133:22, 134:12, 134:16, 134:19, 134:22, 135:10, 135:11, 135:23, 137:5, 137:17, 141:20, 144:8, 149:11, 150:9, 150:15, 150:17, 151:9, 151:18, 151:20, 155:15, 161:14, 161:23, 164:3, 165:10, 165:16
doctor's ^[1] - 55:5
doctors ^[2] - 137:14, 158:16
document ^[23] - 19:3, 19:13, 30:16, 31:17, 32:4, 32:15, 32:17, 32:22, 32:23, 33:7, 33:8, 33:14, 33:17, 33:18, 33:19, 33:22, 38:2, 41:13, 42:8, 42:25, 43:3, 57:7
Document ^[1] - 32:5
documented ^[1] - 32:17
documents ^[4] - 10:24, 15:16, 19:1, 34:1
dollar ^[1] - 48:13
dollars ^[2] - 38:9, 142:3
domain ^[1] - 82:15
domains ^[5] - 65:11, 65:13, 65:15, 82:12, 163:11
donate ^[2] - 54:11
donated ^[1] - 7:18

donating ^[2] - 7:24, 23:2
donation ^[14] - 19:16, 20:5, 20:17, 21:6, 21:13, 22:16, 48:11, 48:15, 49:2, 49:8, 49:23, 50:7, 50:12, 50:15
donations ^[3] - 19:10, 47:13, 49:10
done ^[25] - 34:3, 45:3, 51:7, 51:20, 54:15, 59:12, 66:24, 69:6, 70:4, 70:5, 72:9, 73:1, 73:7, 77:15, 114:5, 115:14, 115:24, 118:14, 121:17, 126:24, 131:16, 139:2, 142:15, 163:6, 166:9
donors ^[2] - 23:6, 23:11
dopamine ^[2] - 64:5, 96:13
Dorothy ^[1] - 61:22
double ^[1] - 86:15
down ^[5] - 38:19, 79:18, 107:5, 156:20, 157:3
dozens ^[2] - 43:11, 43:12
Dr ^[36] - 55:9, 57:5, 59:8, 60:10, 60:11, 60:12, 60:13, 60:14, 72:17, 77:25, 85:14, 85:24, 87:24, 116:6, 117:15, 117:20, 122:8, 136:19, 136:22, 139:12, 141:2, 141:5, 143:11, 143:15, 143:18, 143:21, 147:25, 148:2, 150:4, 151:6, 152:18, 152:22, 158:25
draft ^[2] - 41:24, 42:3
drawing ^[1] - 14:16
drawn ^[1] - 21:11
dress ^[1] - 66:14
drive ^[3] - 67:19, 147:10, 147:19
drives ^[1] - 13:19
driving ^[5] - 147:12, 147:22, 148:21, 149:7, 149:10
drove ^[2] - 147:17, 147:24
due ^[5] - 55:5, 99:19, 103:3, 118:24, 142:16
duly ^[1] - 55:20
Duncan ^[1] - 11:8
duration ^[1] - 113:22
during ^[6] - 16:25, 25:2, 85:4, 101:10, 165:23
duties ^[1] - 18:18
dying ^[1] - 34:6
Dyke ^[1] - 11:11
dysfunction ^[13] - 67:12, 67:15, 75:23, 76:12, 77:4, 78:22, 80:7, 80:8, 81:10, 84:8, 152:7, 159:11, 162:12
dysfunctional ^[1] - 121:23

E

e-mail ^[14] - 15:14, 29:9, 29:13, 29:17, 34:19, 34:25, 35:6, 35:24, 36:10, 36:17, 36:23, 48:24, 48:25, 150:19
e-mails ^[5] - 15:2, 15:12, 15:21, 36:20, 37:8
early ^[9] - 63:23, 68:8, 68:11, 68:12, 68:16, 68:20, 160:12, 162:4, 164:10
earned ^[1] - 60:19
easier ^[4] - 31:13, 31:23, 104:3, 105:5
easiest ^[2] - 34:8, 34:9

easy [2] - 108:21, 165:25
Edge [1] - 45:8
edge [2] - 42:6
Edison [2] - 131:6, 135:13
edits [1] - 47:2
educator [1] - 57:18
EEGs [1] - 61:12
effect [3] - 41:20, 54:9, 76:25
effective [2] - 155:2, 155:4
effectively [2] - 82:6, 82:11
effort [1] - 85:20
eighty [3] - 109:21, 110:8
eighty-year-olds [2] - 109:21, 110:8
eighty-years-olds [1] - 110:8
either [4] - 10:24, 78:22, 88:7, 162:5
electronically [1] - 98:12
Eliminator [2] - 14:10, 16:3
Elkhonon [1] - 139:18
ELMO [8] - 19:20, 29:5, 29:7, 31:12, 98:15, 105:17, 128:2, 128:15
Email [4] - 1:23, 1:23, 2:5, 2:9
embarrassment [1] - 89:2
employed [2] - 25:19, 25:23
employee [1] - 32:2
employer [1] - 31:20
enablers [1] - 164:13
encompasses [1] - 62:10
encounters [1] - 58:3
encrypted [4] - 15:3, 15:6, 34:19, 48:25
end [7] - 23:22, 27:19, 57:22, 69:8, 94:16, 159:24, 166:13
ending [1] - 44:23
endowment [4] - 20:21, 20:25, 21:17, 22:7
ends [2] - 137:25, 145:13
enforcement [4] - 35:11, 35:22, 36:5, 36:15
engage [1] - 42:12
engaged [5] - 25:20, 25:24, 27:9, 59:17, 59:20
engagement [1] - 159:24
enjoy [1] - 166:22
enlargement [2] - 72:19, 76:3
ensued [1] - 13:15
ensure [2] - 14:22, 23:16
ensuring [2] - 14:24, 22:22
entailed [1] - 67:6
entirely [3] - 39:16, 45:24, 83:24
entirety [1] - 21:4
entities [8] - 5:19, 8:23, 9:1, 9:17, 9:22, 10:5, 46:25, 47:2
entitled [1] - 167:5
entity [5] - 5:2, 5:6, 6:12, 7:5, 52:8
entrusted [1] - 22:20
enumerated [1] - 159:12
environment [1] - 9:14
episode [2] - 86:4, 86:21
episodes [7] - 86:6, 86:8, 86:10, 86:12, 86:16, 87:9, 147:24

Ernest [2] - 11:15, 11:16
establish [1] - 47:3
established [4] - 6:14, 8:14, 23:11, 23:13
establishment [1] - 19:15
estate [1] - 25:10
estimate [2] - 101:14, 101:17
estimated [1] - 100:7
estimation [1] - 142:21
Eugene [1] - 148:1
European [1] - 129:6
evaluate [1] - 157:24
evaluated [2] - 94:25, 95:4
evaluation [1] - 57:14
evasion [3] - 25:10, 25:20, 27:9
EVATT [1] - 3:2
Evatt [4] - 15:16, 24:14, 151:11
evicted [4] - 46:3, 46:6, 46:13, 46:15
Evidence [1] - 14:10
evidence [12] - 16:3, 71:14, 71:15, 88:23, 98:5, 134:4, 146:6, 149:19, 152:6, 158:19, 161:23, 165:2
evident [1] - 125:14
exact [5] - 62:15, 103:19, 109:3, 109:5, 119:6
exactly [7] - 9:2, 23:17, 35:16, 45:2, 89:19, 140:21, 153:13
exaggerating [1] - 88:8
Exam [1] - 66:24
exam [5] - 61:18, 64:4, 88:13, 88:21, 144:5
EXAMINATION [7] - 4:9, 28:15, 53:20, 55:21, 90:10, 161:21, 164:18
examination [12] - 4:13, 20:6, 31:23, 61:16, 61:20, 85:14, 88:12, 90:8, 93:4, 93:5, 153:14, 163:25
examine [2] - 35:17, 85:21
examined [3] - 66:6, 88:25, 94:22
examiners [3] - 67:2, 88:22, 152:2
example [10] - 68:15, 83:3, 92:9, 96:9, 97:25, 146:19, 163:3, 163:22, 164:9, 164:12
examples [2] - 123:25, 146:17
excel [1] - 163:3
excluded [1] - 87:19
exclusively [1] - 70:22
excuse [2] - 44:22, 156:23
excused [2] - 165:8, 165:11
executed [2] - 24:8, 151:14
executive [3] - 65:14, 82:15, 82:17
exercise [3] - 42:3, 43:4, 43:8
exhibit [18] - 19:14, 98:5, 98:7, 98:10, 98:24, 99:3, 99:5, 103:11, 104:2, 105:10, 112:13, 128:1, 131:17, 133:10, 133:24, 137:18, 150:15, 161:19
Exhibit [26] - 19:19, 29:3, 30:9, 30:22, 34:15, 54:10, 57:3, 102:12, 104:13, 128:1, 128:3, 128:10, 128:14, 128:18,

128:21, 130:16, 130:25, 131:18, 132:5, 132:14, 137:18, 149:13, 150:6, 151:19, 161:24
Exhibits [1] - 133:5
exhibits [4] - 104:17, 105:12, 105:13, 133:3
expect [2] - 71:19, 106:10
expectancy [1] - 86:22
expected [1] - 86:17
expenses [3] - 22:3, 46:17, 46:21
experience [15] - 18:2, 18:3, 18:5, 18:7, 23:2, 23:6, 23:15, 61:6, 94:20, 103:20, 126:5, 136:13, 142:16, 159:18
experienced [1] - 86:4
experiencing [1] - 95:22
expert [25] - 33:6, 59:8, 59:18, 88:9, 89:23, 90:14, 91:11, 95:19, 97:9, 110:24, 113:5, 115:20, 117:25, 118:7, 118:15, 118:21, 119:1, 136:14, 136:23, 136:24, 137:15, 139:10, 143:8
expertise [2] - 60:12, 95:13
experts [9] - 59:24, 60:5, 60:8, 61:13, 115:12, 118:17, 136:20, 141:1
explain [14] - 33:21, 43:20, 68:18, 69:3, 98:1, 100:10, 103:13, 107:1, 112:8, 117:8, 124:11, 145:23, 146:1, 146:5
explains [1] - 127:1
explore [2] - 28:17, 34:10
exposed [2] - 45:9, 53:11
exposure [4] - 5:20, 44:3, 44:4, 44:5
expressed [1] - 89:18
extensive [2] - 80:16, 80:23
extent [2] - 13:14, 126:13
extra [3] - 80:2, 88:6, 165:22
extracellular [1] - 79:23
eye [1] - 122:2
eyes [3] - 97:9, 97:14, 132:19
eyesight [1] - 19:24

F

fabricate [3] - 29:24, 157:14, 157:20
fabricating [1] - 157:25
facets [1] - 60:5
fact [22] - 9:24, 10:17, 13:4, 15:12, 17:17, 17:21, 18:10, 22:19, 24:21, 37:19, 49:22, 51:22, 52:18, 63:24, 84:14, 87:4, 87:10, 92:1, 115:12, 155:1, 158:16, 159:4
factor [1] - 90:18
factors [1] - 100:3
facts [4] - 62:22, 82:23, 83:4, 84:20
factually [1] - 27:23
faculty [2] - 139:20, 154:8
fair [29] - 5:7, 6:23, 9:6, 10:6, 10:9, 10:10, 14:13, 14:21, 17:5, 18:12, 21:1, 24:5, 26:11, 44:3, 44:20, 56:15, 56:24, 95:13, 97:12, 108:5, 124:11, 126:5, 132:15, 133:17, 136:13, 144:18, 150:21, 155:7, 157:6

fairly [1] - 40:15
fake [4] - 33:7, 33:13, 33:17, 39:18
false [3] - 32:22, 33:20, 34:4
familiar [3] - 41:10, 74:6, 147:25
families [2] - 67:25, 69:1
family [6] - 7:13, 8:9, 48:7, 88:6, 89:3, 155:9
far [3] - 43:23, 60:21, 95:5
fashion [1] - 84:6
fault [1] - 134:9
favorite [1] - 57:21
FDG [44] - 70:3, 70:15, 71:8, 71:10, 71:14, 71:17, 74:21, 75:1, 76:6, 78:6, 78:17, 78:21, 79:8, 79:19, 80:19, 81:20, 106:7, 106:9, 114:22, 114:25, 116:7, 116:10, 117:9, 117:12, 117:17, 120:17, 120:18, 121:10, 121:12, 121:14, 121:16, 123:12, 123:14, 123:16, 123:19, 123:23, 124:1, 126:13, 126:15, 129:14, 134:1, 134:22, 162:9, 162:19
features [1] - 63:18
February [6] - 148:8, 148:13, 148:15, 148:18, 148:19
federal [3] - 12:21, 17:7, 26:2
feed [1] - 66:16
fellowship [1] - 57:18
felt [1] - 38:23
few [4] - 21:3, 77:8, 101:8, 146:24
fiduciary [1] - 7:5
field [2] - 59:9, 110:24
fifth [1] - 92:12
figure [2] - 98:7, 98:13
file [5] - 137:1, 137:15, 138:13, 142:11, 153:2
filed [13] - 26:9, 26:14, 52:7, 52:9, 115:20, 116:6, 117:25, 119:2, 119:10, 119:13, 119:18, 141:2, 160:15
filing [1] - 118:6
finances [1] - 67:16
findings [7] - 79:5, 79:8, 79:13, 82:2, 106:9, 121:10, 162:4
fine [6] - 7:3, 78:11, 98:9, 130:13, 161:19
finish [2] - 143:20, 166:8
firing [1] - 148:23
firm [3] - 11:18, 11:23, 18:18
first [20] - 18:10, 18:15, 20:20, 57:7, 63:9, 77:16, 77:17, 77:18, 79:20, 101:22, 102:3, 108:10, 127:21, 131:3, 131:5, 133:11, 149:12, 160:2, 160:5, 160:14
fish [2] - 15:14, 15:15
Fisher [1] - 72:17
fishing [1] - 4:23
fit [1] - 35:18
five [2] - 58:2, 99:8
flight [2] - 54:18, 85:15
flip [4] - 104:16, 128:17, 130:15, 131:9
floating [1] - 104:2

floor [3] - 89:8, 89:12, 89:14
Fluorodeoxyglucose [1] - 79:5
fluorodeoxyglucose [3] - 70:4, 77:3, 79:12
focus [7] - 9:4, 21:14, 89:24, 101:1, 101:2, 102:18, 123:12
folks [1] - 166:18
follow [5] - 72:4, 73:24, 74:1, 77:8, 77:21
following [3] - 12:25, 40:2, 51:25
follows [2] - 55:20, 108:13
food [1] - 66:16
FOR [3] - 1:1, 1:17, 2:1
foregoing [1] - 167:3
foreign [1] - 26:3
Forensic [11] - 59:21, 59:23, 60:16, 114:8, 118:17, 120:6, 136:17, 137:1, 138:13, 139:8, 139:20
forensic [17] - 59:25, 60:6, 60:14, 88:9, 88:14, 88:15, 136:13, 136:14, 136:20, 136:23, 139:10, 139:15, 139:21, 140:15, 142:17, 152:12, 157:11
forged [1] - 32:15
forgery [1] - 32:16
formally [1] - 10:12
formed [1] - 142:14
former [1] - 49:18
forms [3] - 14:24, 15:6, 80:4
formulate [1] - 60:7
forth [3] - 20:4, 23:18, 23:19
forward [1] - 55:11
foundation [2] - 91:14, 115:3
fourth [1] - 92:12
frame [2] - 100:12
Frank [2] - 61:22, 66:8
fraud [1] - 28:1
frequent [3] - 79:12, 80:14, 113:15
friends [1] - 147:5
front [1] - 137:4
frontal [1] - 70:18
frontotemporal [1] - 71:4
frying [1] - 4:23
full [1] - 142:24
fully [5] - 23:4, 69:23, 93:21, 158:5, 163:6
fun [2] - 61:6, 163:9
func [1] - 121:23
function [22] - 65:14, 65:15, 66:19, 66:21, 67:20, 68:2, 71:16, 76:10, 82:15, 82:17, 84:13, 90:25, 91:18, 91:20, 95:5, 114:2, 146:9, 146:18, 163:6, 163:11, 164:11
functional [5] - 66:5, 70:3, 93:24, 145:17, 145:21
functioning [4] - 66:10, 78:25, 125:4, 146:15
fund [1] - 23:14
funded [2] - 56:17, 56:18
funding [2] - 22:3, 56:20

funds [1] - 22:24
FURTHER [1] - 164:18
fuzzy [1] - 146:24

G

gain [5] - 58:19, 88:4, 88:5, 89:1, 89:2
gained [1] - 19:6
game [1] - 163:3
gears [3] - 8:19, 14:8, 23:21
general [2] - 70:10, 150:1
generalized [1] - 72:18
generally [1] - 87:17
generated [3] - 73:9, 103:19, 103:23
generation [1] - 103:17
genetics [1] - 21:15
genuine [2] - 158:10, 158:13
GEORGE [1] - 1:11
geriatric [2] - 60:15, 86:20
gift [1] - 23:7
gifts [2] - 23:12, 47:15
girl [2] - 49:3, 49:24
given [11] - 22:19, 31:19, 31:22, 32:2, 41:19, 47:10, 47:14, 49:15, 49:19, 73:12, 75:8
glad [1] - 127:13
glaringly [1] - 159:14
glia [3] - 76:19, 76:21, 76:25
glial [1] - 76:22
gliosis [1] - 76:25
global [1] - 76:4
glucose [5] - 70:22, 71:2, 78:18, 78:24
Goldberg [1] - 139:18
golf [3] - 163:3, 163:9
Gould [1] - 48:4
government [21] - 17:5, 17:7, 19:14, 25:8, 27:13, 27:16, 27:22, 30:11, 36:16, 46:5, 51:17, 51:24, 52:4, 53:8, 54:4, 55:7, 85:16, 118:2, 158:16, 164:20, 166:10
GOVERNMENT [1] - 1:17
Government [1] - 27:25
Government's [2] - 19:19, 54:9
grade [1] - 126:14
Graham [3] - 32:7, 32:12, 33:21
Grand [2] - 17:4, 25:2
graphs [1] - 99:9
gratefully [1] - 23:8
gray [4] - 112:22, 112:25, 113:3, 121:19
great [6] - 19:24, 55:17, 74:16, 74:18, 90:5, 165:7
greater [4] - 71:15, 74:23, 76:5, 88:15
greatest [1] - 73:11
greatly [2] - 86:14, 87:2
Greenberg [1] - 11:25
Grossman [1] - 56:9
grounds [1] - 24:13
group [3] - 59:20, 124:7, 129:22
groups [2] - 124:6, 127:8

<p>guess [6] - 9:4, 17:21, 46:14, 113:21, 125:9, 164:6</p> <p>Guilmette [6] - 60:10, 60:12, 60:13, 136:19, 143:18, 143:21</p> <p>Guilmette's [1] - 152:18</p> <p>guns [1] - 149:5</p> <p>Gutierrez [2] - 61:23, 66:8</p> <p>guy [5] - 139:15, 139:16, 139:21, 139:22, 139:23</p> <p>guys [6] - 26:25, 98:6, 114:11, 114:25, 116:1, 116:16</p>	<p>137:17</p> <p>holdings [1] - 5:17</p> <p>holds [2] - 41:20, 43:9</p> <p>home [4] - 10:25, 12:18, 24:9, 147:8</p> <p>Honor [42] - 4:8, 26:19, 27:2, 28:14, 30:7, 30:13, 31:22, 34:12, 35:19, 43:23, 44:13, 45:18, 48:19, 53:15, 53:18, 54:24, 55:4, 59:7, 73:25, 77:23, 84:21, 85:6, 85:13, 89:21, 90:7, 90:9, 91:16, 92:16, 104:19, 115:2, 120:21, 127:17, 130:12, 134:3, 134:8, 163:24, 164:1, 164:15, 165:6, 165:9, 165:19, 166:4</p> <p>HONORABLE [1] - 1:11</p> <p>hopefully [1] - 93:15</p> <p>Hospital [1] - 89:7</p> <p>hospital [2] - 89:7, 148:4</p> <p>hospitalizations [2] - 100:22, 101:11</p> <p>hospitalized [2] - 101:3, 101:7</p> <p>hotel [1] - 35:3</p> <p>hour [3] - 60:18, 60:21, 142:3</p> <p>hours [5] - 142:5, 142:6, 142:18, 143:6, 165:11</p> <p>house [5] - 4:20, 12:14, 13:21, 45:14, 151:15</p> <p>HOUSTON [1] - 1:2</p> <p>Houston [6] - 2:4, 2:13, 12:15, 20:14, 144:4, 148:4</p> <p>houston [1] - 1:4</p> <p>Hrdlicka [2] - 10:12, 10:15</p> <p>hygiene [1] - 16:7</p> <p>hyperphosphorylated [1] - 80:2</p> <p>hypometabolism [10] - 70:17, 70:20, 71:5, 71:8, 81:21, 81:23, 125:2, 125:11, 125:14, 162:11</p> <p>Hypometabolism [2] - 129:8, 131:5</p>	<p>immunity [7] - 24:23, 52:14, 52:16, 53:3, 53:4, 53:6, 53:8</p> <p>impact [3] - 91:18, 154:5, 161:4</p> <p>impaired [1] - 86:2</p> <p>Impairment [1] - 129:9</p> <p>impairment [28] - 58:9, 65:9, 66:5, 66:7, 66:10, 67:10, 67:17, 68:19, 69:5, 69:15, 69:19, 69:22, 78:14, 82:7, 82:9, 82:17, 85:25, 90:17, 90:20, 92:7, 93:24, 96:19, 126:14, 126:19, 149:16, 149:21, 151:2, 163:21</p> <p>impairments [2] - 66:20, 91:17</p> <p>impairs [1] - 68:1</p> <p>impeach [1] - 30:14</p> <p>impeaching [1] - 30:11</p> <p>impeachment [2] - 26:20, 27:4</p> <p>implement [1] - 67:25</p> <p>implies [1] - 87:8</p> <p>important [16] - 23:2, 72:5, 75:10, 84:5, 84:16, 90:24, 90:25, 91:20, 91:23, 106:16, 111:8, 114:19, 154:7, 154:10, 155:20</p> <p>impossible [1] - 111:22</p> <p>impression [7] - 64:7, 72:21, 73:22, 75:20, 76:4, 162:8, 162:14</p> <p>impressions [2] - 162:2, 162:3</p> <p>imprisonment [1] - 89:1</p> <p>improbable [1] - 88:19</p> <p>improper [1] - 26:20</p> <p>IN [1] - 1:1</p> <p>inaccurate [2] - 82:14, 83:2</p> <p>inappropriate [3] - 68:21, 69:4, 159:15</p> <p>inappropriately [1] - 17:18</p> <p>Inc [4] - 5:13, 38:1, 38:4, 38:11</p> <p>inclination [1] - 20:10</p> <p>include [2] - 10:11, 11:7</p> <p>income [5] - 17:18, 17:19, 26:3, 26:4</p> <p>inconsistency [1] - 158:6</p> <p>inconsistent [1] - 83:21</p> <p>incorrect [1] - 6:6</p> <p>increase [2] - 44:19, 86:19</p> <p>increased [1] - 112:25</p> <p>indeed [2] - 59:1, 71:10</p> <p>indenture [1] - 19:2</p> <p>independence [3] - 93:25, 145:17, 145:21</p> <p>independent [1] - 60:1</p> <p>INDEX [1] - 3:1</p> <p>indicate [1] - 79:14</p> <p>indicated [2] - 80:22, 126:18</p> <p>indicating [1] - 80:16</p> <p>indication [1] - 121:2</p> <p>indicator [1] - 120:15</p> <p>indicted [1] - 25:13</p> <p>indictment [6] - 25:16, 27:10, 27:23, 52:10, 52:11, 156:19</p> <p>indirectly [2] - 7:14, 8:10</p> <p>individual [2] - 84:19, 87:9</p> <p>induce [1] - 87:17</p>
H		
<p>half [2] - 71:18, 76:21</p> <p>Hallett [3] - 11:15, 11:18, 18:15</p> <p>hand [8] - 42:7, 44:16, 109:16, 124:17, 127:10, 130:20, 133:11, 150:10</p> <p>handed [1] - 128:4</p> <p>handing [2] - 42:18, 48:21</p> <p>handle [1] - 67:16</p> <p>handled [1] - 39:15</p> <p>handling [1] - 40:18</p> <p>HANKS [1] - 1:11</p> <p>happily [1] - 58:15</p> <p>happy [1] - 58:16</p> <p>hard [1] - 13:19</p> <p>hardware [1] - 111:17</p> <p>harm [1] - 69:6</p> <p>Harris [1] - 11:8</p> <p>hazy [1] - 119:7</p> <p>head [1] - 139:8</p> <p>health [1] - 56:17</p> <p>hear [1] - 110:24</p> <p>heard [2] - 10:11, 116:24</p> <p>HEARING [1] - 1:9</p> <p>hearing [2] - 77:25, 147:19</p> <p>hearsay [2] - 26:16, 26:24</p> <p>heavily [1] - 155:8</p> <p>heavy [1] - 104:22</p> <p>held [3] - 8:3, 20:22, 57:8</p> <p>help [11] - 16:7, 54:12, 73:4, 76:9, 78:16, 84:11, 126:5, 126:10, 141:20, 159:23</p> <p>helped [1] - 18:19</p> <p>helpful [4] - 62:18, 109:2, 111:23, 132:14</p> <p>hence [1] - 67:16</p> <p>hide [1] - 29:1</p> <p>high [3] - 80:23, 146:15, 146:18</p> <p>high-functioning [1] - 146:15</p> <p>higher [3] - 95:5, 112:22, 132:11</p> <p>highly [4] - 70:23, 80:6, 84:1, 88:19</p> <p>himself [3] - 14:16, 66:14, 66:16</p> <p>Hinke [2] - 5:16</p> <p>hippocampus [6] - 106:17, 106:19, 106:25, 107:1, 109:17, 109:21</p> <p>historically [1] - 10:21</p> <p>hold [5] - 56:14, 57:9, 58:25, 115:11,</p>	<p>holdings [1] - 5:17</p> <p>holds [2] - 41:20, 43:9</p> <p>home [4] - 10:25, 12:18, 24:9, 147:8</p> <p>Honor [42] - 4:8, 26:19, 27:2, 28:14, 30:7, 30:13, 31:22, 34:12, 35:19, 43:23, 44:13, 45:18, 48:19, 53:15, 53:18, 54:24, 55:4, 59:7, 73:25, 77:23, 84:21, 85:6, 85:13, 89:21, 90:7, 90:9, 91:16, 92:16, 104:19, 115:2, 120:21, 127:17, 130:12, 134:3, 134:8, 163:24, 164:1, 164:15, 165:6, 165:9, 165:19, 166:4</p> <p>HONORABLE [1] - 1:11</p> <p>hopefully [1] - 93:15</p> <p>Hospital [1] - 89:7</p> <p>hospital [2] - 89:7, 148:4</p> <p>hospitalizations [2] - 100:22, 101:11</p> <p>hospitalized [2] - 101:3, 101:7</p> <p>hotel [1] - 35:3</p> <p>hour [3] - 60:18, 60:21, 142:3</p> <p>hours [5] - 142:5, 142:6, 142:18, 143:6, 165:11</p> <p>house [5] - 4:20, 12:14, 13:21, 45:14, 151:15</p> <p>HOUSTON [1] - 1:2</p> <p>Houston [6] - 2:4, 2:13, 12:15, 20:14, 144:4, 148:4</p> <p>houston [1] - 1:4</p> <p>Hrdlicka [2] - 10:12, 10:15</p> <p>hygiene [1] - 16:7</p> <p>hyperphosphorylated [1] - 80:2</p> <p>hypometabolism [10] - 70:17, 70:20, 71:5, 71:8, 81:21, 81:23, 125:2, 125:11, 125:14, 162:11</p> <p>Hypometabolism [2] - 129:8, 131:5</p>	<p>immunity [7] - 24:23, 52:14, 52:16, 53:3, 53:4, 53:6, 53:8</p> <p>impact [3] - 91:18, 154:5, 161:4</p> <p>impaired [1] - 86:2</p> <p>Impairment [1] - 129:9</p> <p>impairment [28] - 58:9, 65:9, 66:5, 66:7, 66:10, 67:10, 67:17, 68:19, 69:5, 69:15, 69:19, 69:22, 78:14, 82:7, 82:9, 82:17, 85:25, 90:17, 90:20, 92:7, 93:24, 96:19, 126:14, 126:19, 149:16, 149:21, 151:2, 163:21</p> <p>impairments [2] - 66:20, 91:17</p> <p>impairs [1] - 68:1</p> <p>impeach [1] - 30:14</p> <p>impeaching [1] - 30:11</p> <p>impeachment [2] - 26:20, 27:4</p> <p>implement [1] - 67:25</p> <p>implies [1] - 87:8</p> <p>important [16] - 23:2, 72:5, 75:10, 84:5, 84:16, 90:24, 90:25, 91:20, 91:23, 106:16, 111:8, 114:19, 154:7, 154:10, 155:20</p> <p>impossible [1] - 111:22</p> <p>impression [7] - 64:7, 72:21, 73:22, 75:20, 76:4, 162:8, 162:14</p> <p>impressions [2] - 162:2, 162:3</p> <p>imprisonment [1] - 89:1</p> <p>improbable [1] - 88:19</p> <p>improper [1] - 26:20</p> <p>IN [1] - 1:1</p> <p>inaccurate [2] - 82:14, 83:2</p> <p>inappropriate [3] - 68:21, 69:4, 159:15</p> <p>inappropriately [1] - 17:18</p> <p>Inc [4] - 5:13, 38:1, 38:4, 38:11</p> <p>inclination [1] - 20:10</p> <p>include [2] - 10:11, 11:7</p> <p>income [5] - 17:18, 17:19, 26:3, 26:4</p> <p>inconsistency [1] - 158:6</p> <p>inconsistent [1] - 83:21</p> <p>incorrect [1] - 6:6</p> <p>increase [2] - 44:19, 86:19</p> <p>increased [1] - 112:25</p> <p>indeed [2] - 59:1, 71:10</p> <p>indenture [1] - 19:2</p> <p>independence [3] - 93:25, 145:17, 145:21</p> <p>independent [1] - 60:1</p> <p>INDEX [1] - 3:1</p> <p>indicate [1] - 79:14</p> <p>indicated [2] - 80:22, 126:18</p> <p>indicating [1] - 80:16</p> <p>indication [1] - 121:2</p> <p>indicator [1] - 120:15</p> <p>indicted [1] - 25:13</p> <p>indictment [6] - 25:16, 27:10, 27:23, 52:10, 52:11, 156:19</p> <p>indirectly [2] - 7:14, 8:10</p> <p>individual [2] - 84:19, 87:9</p> <p>induce [1] - 87:17</p>
I		
<p>I.C.U [3] - 119:3, 119:6, 119:9</p> <p>idea [5] - 7:23, 50:9, 50:11, 50:14, 81:13</p> <p>ideas [1] - 7:20</p> <p>identification [4] - 31:12, 124:25, 125:7, 127:23</p> <p>identified [1] - 15:13</p> <p>illegal [2] - 33:13, 33:17</p> <p>image [5] - 95:20, 108:2, 124:7, 130:17, 131:10</p> <p>images [24] - 70:9, 70:10, 76:8, 96:7, 97:10, 97:21, 98:1, 99:22, 99:25, 108:25, 121:19, 123:6, 123:22, 128:1, 128:11, 128:14, 128:22, 129:15, 129:17, 131:18, 132:22, 133:17, 136:1, 159:17</p> <p>imagine [2] - 33:15, 43:15</p> <p>imaging [12] - 21:14, 61:12, 64:5, 70:3, 74:20, 76:10, 95:16, 95:19, 96:3, 101:19, 136:11, 165:3</p> <p>Imaging [1] - 129:7</p> <p>immediately [1] - 89:6</p>	<p>I.C.U [3] - 119:3, 119:6, 119:9</p> <p>idea [5] - 7:23, 50:9, 50:11, 50:14, 81:13</p> <p>ideas [1] - 7:20</p> <p>identification [4] - 31:12, 124:25, 125:7, 127:23</p> <p>identified [1] - 15:13</p> <p>illegal [2] - 33:13, 33:17</p> <p>image [5] - 95:20, 108:2, 124:7, 130:17, 131:10</p> <p>images [24] - 70:9, 70:10, 76:8, 96:7, 97:10, 97:21, 98:1, 99:22, 99:25, 108:25, 121:19, 123:6, 123:22, 128:1, 128:11, 128:14, 128:22, 129:15, 129:17, 131:18, 132:22, 133:17, 136:1, 159:17</p> <p>imagine [2] - 33:15, 43:15</p> <p>imaging [12] - 21:14, 61:12, 64:5, 70:3, 74:20, 76:10, 95:16, 95:19, 96:3, 101:19, 136:11, 165:3</p> <p>Imaging [1] - 129:7</p> <p>immediately [1] - 89:6</p>	<p>immunity [7] - 24:23, 52:14, 52:16, 53:3, 53:4, 53:6, 53:8</p> <p>impact [3] - 91:18, 154:5, 161:4</p> <p>impaired [1] - 86:2</p> <p>Impairment [1] - 129:9</p> <p>impairment [28] - 58:9, 65:9, 66:5, 66:7, 66:10, 67:10, 67:17, 68:19, 69:5, 69:15, 69:19, 69:22, 78:14, 82:7, 82:9, 82:17, 85:25, 90:17, 90:20, 92:7, 93:24, 96:19, 126:14, 126:19, 149:16, 149:21, 151:2, 163:21</p> <p>impairments [2] - 66:20, 91:17</p> <p>impairs [1] - 68:1</p> <p>impeach [1] - 30:14</p> <p>impeaching [1] - 30:11</p> <p>impeachment [2] - 26:20, 27:4</p> <p>implement [1] - 67:25</p> <p>implies [1] - 87:8</p> <p>important [16] - 23:2, 72:5, 75:10, 84:5, 84:16, 90:24, 90:25, 91:20, 91:23, 106:16, 111:8, 114:19, 154:7, 154:10, 155:20</p> <p>impossible [1] - 111:22</p> <p>impression [7] - 64:7, 72:21, 73:22, 75:20, 76:4, 162:8, 162:14</p> <p>impressions [2] - 162:2, 162:3</p> <p>imprisonment [1] - 89:1</p> <p>improbable [1] - 88:19</p> <p>improper [1] - 26:20</p> <p>IN [1] - 1:1</p> <p>inaccurate [2] - 82:14, 83:2</p> <p>inappropriate [3] - 68:21, 69:4, 159:15</p> <p>inappropriately [1] - 17:18</p> <p>Inc [4] - 5:13, 38:1, 38:4, 38:11</p> <p>inclination [1] - 20:10</p> <p>include [2] - 10:11, 11:7</p> <p>income [5] - 17:18, 17:19, 26:3, 26:4</p> <p>inconsistency [1] - 158:6</p> <p>inconsistent [1] - 83:21</p> <p>incorrect [1] - 6:6</p> <p>increase [2] - 44:19, 86:19</p> <p>increased [1] - 112:25</p> <p>indeed [2] - 59:1, 71:10</p> <p>indenture [1] - 19:2</p> <p>independence [3] - 93:25, 145:17, 145:21</p> <p>independent [1] - 60:1</p> <p>INDEX [1] - 3:1</p> <p>indicate [1] - 79:14</p> <p>indicated [2] - 80:22, 126:18</p> <p>indicating [1] - 80:16</p> <p>indication [1] - 121:2</p> <p>indicator [1] - 120:15</p> <p>indicted [1] - 25:13</p> <p>indictment [6] - 25:16, 27:10, 27:23, 52:10, 52:11, 156:19</p> <p>indirectly [2] - 7:14, 8:10</p> <p>individual [2] - 84:19, 87:9</p> <p>induce [1] - 87:17</p>

<p>induced [1] - 87:12 indulgence [2] - 130:12, 164:16 infection [2] - 87:12, 87:16 inflammation [2] - 87:17, 87:23 inflammatory [2] - 76:23, 87:15 information [25] - 18:20, 18:22, 18:23, 27:23, 32:22, 33:20, 34:4, 66:7, 73:8, 74:15, 74:18, 75:7, 84:1, 84:5, 89:23, 137:9, 137:21, 146:7, 149:9, 155:14, 160:19, 160:22, 160:23, 161:3, 164:21 informative [1] - 116:13 informed [2] - 6:16, 144:23 injury [1] - 21:1 ink [1] - 32:8 innocent [1] - 27:14 inquiry [1] - 18:24 insists [1] - 22:23 instability [1] - 63:15 instance [1] - 49:9 instead [3] - 6:4, 6:18, 118:5 institutes [1] - 56:17 institution [2] - 20:13, 23:7 institutions [2] - 23:6, 23:7 instruct [1] - 13:12 instructions [2] - 31:19, 32:1 insult [1] - 86:1 insults [2] - 86:24, 87:11 insurance [1] - 88:5 intended [1] - 26:22 interactions [1] - 82:21 interest [2] - 8:8, 51:8 interesting [1] - 162:21 interfere [1] - 67:11 internal [1] - 5:20 interrupted [1] - 120:22 intervals [1] - 71:20 intervention [1] - 21:21 interventional [1] - 21:22 interview [3] - 143:13, 155:18, 158:17 interviewing [1] - 143:16 interviews [1] - 61:21 introduced [1] - 134:7 introduces [1] - 111:20 introducing [1] - 26:21 introduction [1] - 18:10 investigation [7] - 13:5, 13:14, 20:11, 44:5, 52:19, 52:24, 52:25 investments [1] - 45:3 involved [6] - 10:19, 10:22, 38:18, 52:12, 61:13, 84:17 involvement [1] - 10:20 irrevocable [3] - 43:4, 43:11 IRS [10] - 17:9, 17:12, 17:14, 17:17, 17:22, 18:1, 18:22, 19:2, 19:5, 45:1 issue [11] - 35:14, 40:17, 54:9, 89:4, 89:25, 90:4, 90:25, 91:8, 91:20, 91:23 issued [2] - 59:1, 61:13 issues [4] - 13:16, 35:8, 64:15, 166:3 itself [5] - 17:22, 17:23, 81:1, 87:13,</p>	<p>152:13</p> <p style="text-align: center;">J</p> <p>James [4] - 2:6, 12:3, 127:14, 139:24 January [6] - 26:13, 83:18, 83:22, 145:3, 145:21, 154:13 Jason [1] - 2:2 Jefferson [1] - 23:10 Jewish [1] - 166:4 jloonam@jonesday.com [1] - 2:9 job [7] - 18:23, 37:24, 38:11, 38:20, 67:20, 68:1, 123:18 John's [2] - 24:25, 26:11 Jones [7] - 2:2, 2:7, 51:18, 51:23, 52:2, 54:3, 54:7 journal [2] - 131:7, 138:25 Journal [1] - 129:6 journals [1] - 58:18 JR [1] - 1:11 judge [7] - 67:21, 68:16, 68:17, 68:21, 69:7, 111:5, 136:21 Judge [1] - 166:7 JUDGE [1] - 1:12 judging [1] - 68:22 judgment [6] - 67:15, 68:19, 69:6, 69:7, 157:16, 163:22 July [6] - 72:10, 115:24, 119:21, 119:25, 138:10, 143:22 jump [1] - 129:1 jumped [1] - 19:15 June [5] - 19:20, 138:9, 160:9 jurisdiction [2] - 8:24, 9:20 Jury [2] - 17:4, 25:2 Justice [5] - 1:20, 25:7, 25:18, 25:22, 26:1 jvornado@jonesday.com [1] - 2:5</p> <p style="text-align: center;">K</p> <p>Kaplan [1] - 11:25 Kathleen [4] - 2:12, 167:3, 167:7, 167:8 Kathryn [1] - 2:6 keep [2] - 68:22, 165:21 keeping [1] - 144:3 Keneally [1] - 2:6 Kepke [4] - 10:11, 10:25, 13:8, 14:6 Kepke's [3] - 12:14, 12:18, 51:2 kept [1] - 147:22 keys [2] - 147:14, 147:17 killed [1] - 9:2 kind [5] - 13:5, 16:18, 20:18, 152:11, 159:16 kkeneally@jonesday.com [1] - 2:9 Kling [1] - 11:11 knowing [1] - 14:18 known [3] - 5:20, 9:7, 16:25 knows [1] - 54:4 Kozusko [1] - 11:8 KYC [2] - 9:8, 9:21</p>	<p style="text-align: center;">L</p> <p>lab [2] - 21:18, 57:17 laboratory [1] - 56:20 lack [2] - 103:18, 142:16 lacked [1] - 63:1 Lai [3] - 147:25, 148:1, 148:2 Lance [1] - 48:4 land [2] - 4:20, 7:24 Langston [9] - 1:18, 3:3, 4:14, 8:2, 8:20, 11:1, 13:24, 15:2, 54:3 LANGSTON [44] - 26:16, 26:19, 28:14, 28:16, 29:6, 29:8, 30:7, 30:13, 30:18, 30:24, 31:22, 31:25, 34:12, 34:17, 35:19, 35:20, 37:1, 37:4, 41:6, 41:9, 42:16, 42:18, 42:20, 42:22, 43:18, 43:22, 44:1, 44:12, 44:15, 45:18, 45:21, 48:17, 48:21, 48:23, 50:22, 50:25, 53:15, 53:24, 54:15, 55:3, 59:16, 98:20, 124:23, 135:2 largest [1] - 89:7 last [9] - 22:6, 42:23, 56:2, 86:6, 128:17, 128:23, 163:2, 164:4, 164:20 late [6] - 63:22, 115:24, 163:2, 163:4, 163:7, 163:15 late-stage [1] - 63:22 latter [2] - 103:5, 103:6 laundering [1] - 25:24 law [12] - 9:18, 11:22, 18:18, 33:6, 33:9, 35:10, 35:22, 36:5, 36:15, 40:9, 91:11 lawfully [1] - 17:16 laws [1] - 42:24 lawsuits [3] - 53:9, 53:12, 53:13 lawyer [4] - 9:24, 11:19, 18:14, 67:21 lawyers [4] - 45:4, 154:17, 154:20, 155:1 lay [2] - 97:21, 102:24 layperson [6] - 103:2, 112:15, 122:3, 122:15, 122:17, 124:11 lead [2] - 66:10, 87:13 leading [6] - 13:25, 31:21, 35:13, 75:25, 78:9, 78:11 leads [2] - 81:25, 87:17 learn [2] - 60:20, 95:3 learned [4] - 13:1, 18:15, 84:1, 127:14 learning [1] - 13:7 least [1] - 157:9 leave [2] - 93:1, 147:8 Lee [1] - 1:18 lee.f.langston@usdoj.gov [1] - 1:23 legal [9] - 10:2, 10:4, 11:6, 28:18, 28:20, 33:7, 34:11, 91:12, 154:11 less [7] - 9:21, 49:5, 49:6, 97:8, 103:13, 114:19, 125:14 letter [5] - 20:16, 22:23, 23:16, 23:18, 23:19 letters [1] - 135:7 letting [1] - 35:17 level [19] - 17:6, 37:25, 39:1, 39:3, 39:4,</p>
---	---	---

66:18, 66:21, 69:21, 73:5, 78:14, 82:7, 86:1, 87:6, 88:16, 90:17, 90:20, 92:7, 99:20, 146:18
levels [2] - 80:23, 96:19
Lewin [1] - 11:22
Lewy [11] - 58:10, 58:22, 62:2, 62:5, 62:7, 62:8, 62:11, 62:13, 65:23, 162:6
lied [1] - 51:12
life [4] - 8:15, 84:4, 86:22, 119:9
Ligand [1] - 74:22
likely [4] - 81:15, 98:3, 103:3, 109:6
limited [1] - 87:10
line [4] - 4:17, 36:11, 38:19, 42:23
list [3] - 47:9, 137:12, 141:15
listed [2] - 142:24, 144:13
listen [2] - 70:11, 92:11
listing [2] - 137:8, 137:21
lists [1] - 31:14
literally [1] - 166:10
literature [4] - 86:15, 123:22, 124:3, 133:25
litigation [1] - 26:10
lived [2] - 29:19, 159:18
living [5] - 56:5, 66:13, 66:18, 67:11, 94:5
LLC [1] - 5:16
Lloyd [10] - 30:3, 30:4, 30:5, 30:25, 31:6, 31:9, 32:5, 32:10, 32:11, 32:18
lobes [3] - 106:6, 106:13, 125:12
long-term [1] - 67:14
longitudinal [2] - 72:8, 75:4
longitudinally [1] - 72:4
look [22] - 11:3, 32:4, 36:9, 36:11, 51:2, 51:6, 70:8, 72:20, 84:4, 99:22, 101:19, 119:19, 121:18, 122:3, 122:20, 123:14, 126:9, 131:22, 133:14, 137:7, 155:15, 166:13
looked [6] - 20:17, 38:1, 69:18, 70:10, 89:3, 135:11
looking [16] - 10:24, 19:22, 36:16, 76:10, 81:23, 97:10, 99:25, 103:11, 105:6, 110:11, 123:10, 128:22, 129:13, 165:24, 166:13
looks [4] - 121:19, 123:16, 124:1, 124:12
Loonam [5] - 2:6, 3:6, 3:7, 97:16, 102:7
LOONAM [63] - 55:1, 55:4, 55:7, 55:22, 59:7, 59:12, 73:24, 74:2, 77:9, 77:23, 78:3, 78:5, 78:9, 78:12, 84:21, 85:1, 85:6, 85:13, 85:20, 85:23, 89:21, 90:3, 90:6, 91:2, 91:5, 91:7, 92:16, 92:18, 97:17, 98:9, 100:12, 102:9, 104:25, 105:9, 105:15, 105:18, 110:17, 110:20, 111:1, 115:2, 115:6, 120:21, 127:13, 127:15, 130:21, 133:4, 134:5, 135:18, 136:5, 158:18, 161:10, 161:15, 161:18, 161:22, 163:24, 164:15, 164:19, 165:4, 165:9, 165:16, 165:19, 166:3, 166:20
loose [2] - 45:7, 68:9

lose [1] - 147:2
losing [1] - 76:20
loss [18] - 63:16, 64:18, 71:15, 72:6, 72:14, 72:15, 76:15, 76:16, 77:1, 77:2, 77:10, 77:11, 77:14, 78:23, 103:7, 106:10, 145:16, 145:21
Lou [1] - 11:11
loved [2] - 88:6, 158:6
low [5] - 100:8, 100:13, 100:20, 101:15, 101:18
lower [2] - 9:7, 9:20
lowers [1] - 86:21
loyalty [1] - 159:5
lunch [1] - 85:4
lying [3] - 51:14, 157:9, 158:9

M

M.D [2] - 3:5, 55:19
MAGNANI [62] - 29:7, 59:15, 78:11, 90:9, 90:11, 91:16, 91:24, 92:5, 92:23, 97:18, 97:19, 98:6, 98:11, 98:15, 98:19, 98:21, 98:23, 102:11, 102:13, 104:1, 104:5, 104:18, 104:22, 105:1, 105:12, 105:16, 105:19, 111:3, 115:5, 115:9, 115:16, 121:4, 124:24, 127:14, 127:16, 127:20, 130:14, 130:22, 130:24, 133:2, 133:7, 134:3, 134:8, 134:11, 134:13, 135:1, 135:3, 135:6, 135:9, 135:16, 135:21, 136:3, 136:8, 136:10, 158:20, 158:22, 159:20, 159:22, 161:6, 161:16, 164:1, 165:6
Magnani [2] - 1:19, 3:7
magnetic [1] - 21:23
mail [14] - 15:14, 29:9, 29:13, 29:17, 34:19, 34:25, 35:6, 35:24, 36:10, 36:17, 36:23, 48:24, 48:25, 150:19
mails [5] - 15:2, 15:12, 15:21, 36:20, 37:8
main [1] - 89:5
maintain [2] - 142:17, 164:11
majority [1] - 84:14
malinger [10] - 88:1, 88:8, 88:16, 88:18, 94:17, 95:6, 95:9, 95:13, 95:19, 152:9
man [3] - 29:25, 30:5, 61:4
manage [1] - 38:20
managed [1] - 26:3
MANAGER [4] - 4:5, 29:5, 85:7, 85:9
manifest [1] - 164:10
manner [3] - 8:4, 22:20, 63:2
maps [1] - 99:9
March [12] - 29:9, 71:10, 101:2, 101:6, 117:13, 122:5, 152:22, 153:25, 156:23, 161:24, 162:8
Marcopulos [1] - 140:7
marine [2] - 8:14, 8:15
mark [12] - 31:11, 34:18, 37:7, 44:12, 48:18, 124:21, 125:7, 127:22, 130:25, 133:9, 135:6, 143:15

marked [5] - 19:18, 48:22, 98:11, 104:24, 135:4
market [1] - 6:23
marking [3] - 124:25, 130:21, 135:22
mask [2] - 55:15, 55:16
massive [2] - 103:2, 103:6
matches [1] - 79:6
materials [1] - 61:8
matter [15] - 26:14, 26:23, 30:12, 38:17, 59:18, 60:7, 60:9, 60:17, 60:21, 61:5, 61:24, 112:22, 112:25, 113:3, 167:5
matters [1] - 154:11
MCI [9] - 93:21, 125:17, 126:2, 126:7, 129:17, 129:18, 134:18, 145:13, 148:9
mean [24] - 10:15, 35:15, 39:1, 40:15, 54:10, 61:10, 75:7, 78:19, 84:12, 85:4, 101:18, 103:2, 103:3, 107:16, 108:14, 110:20, 114:11, 115:4, 115:11, 143:9, 146:25, 150:1, 152:5, 160:23
meaning [2] - 102:24, 103:5
means [4] - 93:23, 109:20, 138:20, 152:16
meant [1] - 155:13
measure [5] - 77:5, 114:22, 116:10, 117:9, 117:10
measured [2] - 95:25, 127:4
measurement [1] - 108:18
measures [3] - 14:21, 67:2, 165:3
mechanical [1] - 2:15
mechanism [3] - 33:23, 34:1, 34:5
Medical [1] - 19:11
medical [10] - 48:6, 56:12, 56:14, 57:18, 61:11, 61:15, 149:14, 149:16, 149:20, 151:2
medicine [1] - 56:9
Medicine [2] - 20:4, 129:7
meet [3] - 52:4, 165:14, 165:15
meeting [2] - 51:16, 54:7
meetings [3] - 17:5, 25:6, 54:3
member [1] - 139:20
members [6] - 7:14, 8:9, 48:7, 114:8, 120:5, 138:13
memo [7] - 28:4, 29:25, 32:8, 44:7, 44:9, 44:17, 46:8
memories [1] - 84:16
memory [34] - 12:8, 57:14, 65:9, 65:10, 65:15, 67:12, 67:13, 67:14, 82:12, 82:24, 84:13, 84:14, 91:17, 95:10, 106:14, 106:17, 118:16, 119:6, 149:16, 149:20, 149:23, 151:2, 153:6, 153:12, 153:21, 154:1, 154:7, 154:25, 163:1, 163:11, 163:13, 163:16, 164:4
Mental [1] - 66:24
mental [1] - 63:4
mention [1] - 22:22
mentioned [12] - 12:22, 13:8, 45:23, 51:1, 62:4, 64:14, 76:4, 106:4, 116:19, 116:22, 116:24, 149:22
mere [1] - 132:19
mess [2] - 161:17, 161:18

message [1] - 68:25
met [6] - 18:15, 51:17, 51:23, 51:24, 52:2, 61:17
metabolic [3] - 70:23, 86:1, 87:11
metabolically [1] - 70:23
method [3] - 74:9, 74:12, 74:13
Methodist [1] - 148:4
methodologies [1] - 73:10
methods [2] - 59:6, 74:11
Michael [1] - 139:7
Michele [1] - 152:23
middle [1] - 98:20
might [21] - 13:22, 20:10, 28:5, 28:6, 39:14, 46:7, 47:1, 82:12, 85:2, 99:20, 103:2, 104:2, 105:5, 112:14, 123:18, 154:4, 155:23, 157:13, 157:19, 159:5, 166:20
mild [19] - 58:9, 67:7, 67:8, 67:10, 67:25, 68:3, 68:7, 68:11, 68:12, 69:11, 69:13, 69:15, 69:19, 69:22, 83:17, 83:23, 145:10, 162:4
Mild [1] - 129:9
military [1] - 22:8
Miller [4] - 2:12, 167:3, 167:7, 167:8
millimeter [3] - 111:19, 111:25, 112:3
million [5] - 21:4, 21:14, 21:21, 23:17, 45:14
mind [6] - 17:18, 27:24, 105:13, 123:12, 123:15, 161:20
Mini [1] - 66:24
Mini-Mental [1] - 66:24
mis [1] - 118:12
mislead [1] - 112:15
misleading [2] - 108:23, 115:3
mismanaging [1] - 38:24
misquote [1] - 94:3
misrepresenting [1] - 102:5
missed [3] - 46:2, 54:18, 54:19
missing [2] - 42:6, 42:14
misstatement [1] - 6:11
misstates [1] - 158:18
mistaken [1] - 83:4
MMSE [7] - 127:5, 127:8, 129:20, 129:25, 130:3, 132:9, 132:16
MoCAs [1] - 66:25
mode [1] - 31:23
moderate [30] - 62:1, 62:4, 66:1, 66:4, 66:11, 67:12, 67:15, 67:17, 72:18, 72:21, 72:22, 75:17, 75:20, 79:11, 80:13, 82:1, 82:4, 83:17, 93:18, 94:2, 113:15, 122:24, 130:7, 145:4, 145:8, 145:10, 146:21, 146:22, 147:1, 164:12
molecular [1] - 21:15
Molecular [1] - 129:7
moment [2] - 53:15, 150:5
Monday [2] - 166:8, 166:19
money [3] - 23:9, 25:24, 50:20
monies [2] - 22:19, 23:17
monitor [2] - 42:12

months [1] - 83:18
morning [2] - 58:15, 165:21
Morrison [2] - 11:15, 11:16
mortality [2] - 86:20, 86:21
mortals [1] - 132:19
most [12] - 34:8, 58:8, 65:2, 75:10, 90:18, 90:24, 90:25, 91:20, 91:23, 98:3, 106:16, 155:24
mostly [1] - 97:4
motion [2] - 52:7, 52:9
motivation [3] - 25:9, 157:14, 157:20
motor [11] - 63:13, 63:15, 63:20, 63:24, 65:15, 163:1, 163:5, 163:9, 163:13, 163:16, 164:4
Mountain [5] - 4:20, 5:12, 5:13, 5:25, 6:18
mouth [1] - 151:5
move [6] - 59:8, 133:2, 134:4, 151:19, 159:2, 161:19
moved [4] - 8:23, 9:1, 83:3, 136:3
movements [1] - 163:5
MR [195] - 4:8, 4:10, 26:16, 26:17, 26:19, 27:1, 27:5, 27:6, 28:12, 28:14, 28:16, 29:6, 29:7, 29:8, 30:7, 30:10, 30:13, 30:16, 30:18, 30:19, 30:21, 30:24, 31:21, 31:22, 31:25, 34:12, 34:14, 34:17, 35:13, 35:19, 35:20, 37:1, 37:2, 37:4, 41:6, 41:7, 41:9, 42:16, 42:18, 42:20, 42:22, 43:18, 43:22, 43:24, 44:1, 44:12, 44:15, 45:18, 45:19, 45:21, 48:17, 48:21, 48:23, 50:22, 50:23, 50:25, 53:15, 53:18, 53:21, 53:24, 54:1, 54:2, 54:14, 54:15, 55:1, 55:3, 55:4, 55:7, 55:22, 59:7, 59:12, 59:15, 59:16, 73:24, 74:2, 77:9, 77:23, 78:3, 78:5, 78:9, 78:11, 78:12, 84:21, 85:1, 85:6, 85:13, 85:20, 85:23, 89:21, 90:3, 90:6, 90:9, 90:11, 91:2, 91:5, 91:7, 91:16, 91:24, 92:5, 92:16, 92:18, 92:23, 97:17, 97:18, 97:19, 98:6, 98:9, 98:11, 98:15, 98:19, 98:20, 98:21, 98:23, 100:12, 102:9, 102:11, 102:13, 104:1, 104:5, 104:18, 104:22, 104:25, 105:1, 105:9, 105:12, 105:15, 105:16, 105:18, 105:19, 110:17, 110:20, 111:1, 111:3, 115:2, 115:5, 115:6, 115:9, 115:16, 120:21, 121:4, 124:23, 124:24, 127:13, 127:14, 127:15, 127:16, 127:20, 130:14, 130:21, 130:22, 130:24, 133:2, 133:4, 133:7, 134:3, 134:5, 134:8, 134:11, 134:13, 135:1, 135:2, 135:3, 135:6, 135:9, 135:16, 135:18, 135:21, 136:3, 136:5, 136:8, 136:10, 158:18, 158:20, 158:22, 159:20, 159:22, 161:6, 161:10, 161:15, 161:16, 161:18, 161:22, 163:24, 164:1, 164:15, 164:19, 165:4, 165:6, 165:9, 165:16, 165:19, 166:3, 166:6, 166:20, 166:22
MRI [14] - 70:3, 71:22, 72:4, 72:16,

72:24, 73:12, 75:3, 78:14, 79:19, 97:4, 103:14, 110:16, 111:6, 111:17
MRIs [5] - 77:12, 78:6, 97:7, 103:21, 122:20
multi [2] - 48:13, 143:8
multi-billion-dollar [1] - 48:13
multidisciplinary [1] - 60:1
multiple [9] - 16:8, 60:5, 66:25, 67:3, 86:16, 87:9, 124:8, 152:2, 153:3
multiplier [1] - 54:9
multiplies [1] - 76:25
must [2] - 39:6, 39:8

N

name [14] - 12:22, 15:13, 51:6, 52:11, 55:25, 56:2, 94:24, 117:19, 129:2, 131:3, 131:4, 156:17
named [1] - 5:2
names [3] - 13:7, 15:19, 140:24
national [2] - 56:16, 59:24
NE [1] - 1:21
near [1] - 80:22
necessarily [3] - 106:11, 138:23, 163:4
need [22] - 19:22, 26:2, 33:20, 39:11, 39:18, 39:25, 40:22, 43:13, 74:13, 77:22, 98:10, 100:10, 101:25, 102:8, 105:22, 109:16, 110:24, 115:15, 124:17, 150:15, 156:1, 161:12
needed [6] - 6:3, 24:22, 32:20, 36:23, 42:23, 63:5
needs [4] - 21:7, 70:23, 85:15, 115:3
negative [2] - 121:7, 121:12
negotiate [1] - 37:17
nervous [1] - 87:20
net [1] - 76:25
neuritic [1] - 80:14
neurocognitive [1] - 152:23
neurodegeneration [12] - 96:12, 106:9, 107:21, 108:10, 108:13, 113:24, 114:20, 114:23, 116:10, 117:10, 122:4, 126:17
neurodegenerative [14] - 58:11, 58:21, 63:13, 64:10, 65:2, 65:18, 70:24, 75:12, 76:14, 76:20, 87:3, 162:5, 163:1, 163:15
neurofib [1] - 80:8
neurofibrillary [5] - 65:4, 79:7, 79:15, 80:4, 80:5
neuroimaging [6] - 69:24, 70:1, 88:22, 97:14, 102:15, 113:6
neurological [1] - 61:18
neurologist [3] - 56:6, 70:14, 89:11
Neurology [1] - 131:8
neurology [5] - 56:23, 56:24, 57:24, 59:9, 89:23
neuronal [4] - 77:1, 78:23, 80:6, 87:1
neurons [6] - 76:19, 76:21, 78:23, 78:24, 79:24, 80:6
neuropathologist [2] - 56:6, 76:18

<p>neuropathology [3] - 57:24, 59:9, 89:24</p> <p>neuropsychiatric [1] - 63:17</p> <p>neuropsychiatry [4] - 20:22, 20:25, 21:22, 22:7</p> <p>neuropsychological [1] - 66:23</p> <p>neuropsychologist [1] - 60:14</p> <p>neuropsychopharmacology [1] - 21:24</p> <p>neuroradiological [1] - 96:7</p> <p>neuroradiologist [5] - 60:11, 70:8, 70:12, 75:16, 140:14</p> <p>neuroradiology [4] - 96:1, 96:20, 122:25, 123:3</p> <p>Neuroreader [16] - 74:6, 74:8, 75:5, 97:9, 99:6, 99:9, 104:6, 104:9, 105:2, 105:23, 109:9, 109:10, 110:10, 111:20, 112:6, 112:18</p> <p>neuroscientist [1] - 56:7</p> <p>never [5] - 25:3, 27:19, 116:18, 123:11, 126:4</p> <p>new [4] - 20:25, 21:8, 21:14, 83:3</p> <p>New [6] - 2:8, 34:23, 56:9, 85:15, 89:7, 93:1</p> <p>news [1] - 166:18</p> <p>next [6] - 6:25, 21:13, 21:21, 49:24, 89:6, 92:22</p> <p>next' [1] - 13:22</p> <p>nice [2] - 165:13, 165:15</p> <p>NIH [1] - 56:20</p> <p>NO [1] - 1:3</p> <p>non [3] - 63:15, 63:20, 144:15</p> <p>non-motor [2] - 63:15, 63:20</p> <p>non-video [1] - 144:15</p> <p>none [1] - 48:1</p> <p>nonexistent [2] - 9:7, 163:12</p> <p>norm [1] - 60:18</p> <p>normal [9] - 73:20, 80:1, 84:4, 84:9, 109:23, 110:3, 110:12, 110:16, 124:7</p> <p>normalcy [1] - 111:6</p> <p>normally [1] - 59:12</p> <p>note [2] - 128:2, 148:16</p> <p>noted [1] - 75:16</p> <p>nothing [8] - 6:7, 16:24, 29:1, 29:21, 29:22, 43:10, 53:16, 151:8</p> <p>noticeable [1] - 71:20</p> <p>notify [1] - 93:12</p> <p>notion [1] - 9:5</p> <p>novel [2] - 59:4, 59:5</p> <p>NOVEMBER [2] - 1:6, 4:2</p> <p>November [3] - 142:7, 142:8, 142:12</p> <p>Nuclear [1] - 129:6</p> <p>number [10] - 29:20, 44:23, 53:11, 53:13, 56:15, 56:24, 68:24, 80:21, 133:1, 149:14</p> <p>numbered [1] - 137:11</p> <p>numbers [9] - 73:9, 73:15, 87:1, 103:19, 103:23, 111:6, 112:9, 112:19</p> <p>numerous [1] - 10:4</p> <p>NY [1] - 2:8</p> <p>NYU [8] - 56:10, 56:13, 56:14, 56:15,</p>	<p>56:23, 57:11, 89:6, 139:19</p> <p>NYU's [1] - 89:6</p> <p style="text-align: center;">O</p> <p>oath [1] - 157:1</p> <p>object [4] - 7:21, 30:10, 91:13, 115:9</p> <p>objection [33] - 26:16, 30:9, 30:20, 30:22, 31:21, 34:14, 34:15, 35:13, 37:2, 41:7, 43:24, 43:25, 45:19, 45:20, 50:23, 50:24, 59:15, 91:2, 92:2, 92:16, 110:17, 110:19, 110:23, 115:2, 120:21, 133:4, 133:5, 134:5, 135:18, 135:19, 136:5, 136:6, 158:18</p> <p>objective [3] - 71:14, 88:23, 165:3</p> <p>obligations [1] - 7:5</p> <p>observable [1] - 81:9</p> <p>observance [2] - 84:8, 166:5</p> <p>observe [5] - 70:16, 71:7, 72:7, 82:22, 82:25</p> <p>observed [5] - 81:24, 97:22, 98:2, 101:10, 159:11</p> <p>obviously [3] - 13:4, 119:25, 122:1</p> <p>occasions [4] - 39:13, 67:3, 68:24, 138:12</p> <p>occipital [1] - 125:12</p> <p>Occipital [1] - 129:8</p> <p>occur [1] - 63:23</p> <p>occurred [1] - 13:4</p> <p>occurs [1] - 76:17</p> <p>October [5] - 25:13, 34:20, 61:17, 143:25, 148:16</p> <p>OF [2] - 1:1, 1:3</p> <p>offenses [1] - 24:23</p> <p>offer [8] - 30:8, 34:12, 37:1, 41:6, 43:18, 43:23, 45:18, 50:22</p> <p>offered [1] - 90:3</p> <p>office [2] - 10:25</p> <p>officialdom [1] - 36:13</p> <p>offshore [2] - 25:9, 39:16</p> <p>often [10] - 63:17, 67:12, 67:16, 67:23, 73:1, 75:21, 86:1, 86:14, 92:12, 103:17</p> <p>older [1] - 86:20</p> <p>olds [3] - 109:21, 110:8</p> <p>on-paper [1] - 49:12</p> <p>once [4] - 11:18, 71:18, 107:12</p> <p>one [69] - 4:19, 5:23, 6:5, 6:6, 7:20, 10:17, 16:11, 19:1, 21:21, 22:6, 23:7, 23:10, 25:6, 28:10, 31:14, 33:20, 37:13, 38:21, 40:12, 41:24, 47:12, 48:7, 53:15, 74:9, 74:11, 75:15, 77:19, 80:20, 84:17, 88:24, 100:3, 101:10, 101:13, 101:19, 110:2, 111:18, 116:20, 124:3, 125:6, 125:16, 126:18, 127:4, 127:13, 127:24, 129:2, 130:21, 131:24, 133:1, 135:11, 135:25, 136:4, 137:17, 140:2, 141:20, 144:10, 145:23, 146:25, 153:6, 153:25, 154:13, 154:25, 155:10, 158:6, 159:8,</p>	<p>159:20, 160:16, 164:16</p> <p>one-to-one [1] - 126:18</p> <p>ones [2] - 9:3, 88:6</p> <p>open [1] - 161:11</p> <p>opined [1] - 113:6</p> <p>opining [2] - 89:25, 91:7</p> <p>opinion [13] - 69:10, 81:25, 82:5, 82:10, 90:3, 94:8, 102:6, 111:7, 138:24, 144:24, 149:2, 149:8, 161:4</p> <p>opinions [2] - 89:18, 113:5</p> <p>oppose [1] - 9:16</p> <p>opposed [1] - 73:15</p> <p>option [1] - 166:10</p> <p>order [11] - 47:3, 51:5, 55:2, 55:5, 81:15, 114:11, 116:4, 116:20, 117:6, 118:5, 119:25</p> <p>ordered [7] - 114:25, 115:23, 117:15, 117:22, 117:24, 119:13, 162:18</p> <p>ordering [10] - 114:8, 116:1, 116:16, 118:13, 118:18, 118:25, 120:4, 120:6, 120:8, 140:19</p> <p>organization [1] - 17:15</p> <p>orient [1] - 19:16</p> <p>orientation [3] - 67:17, 133:20, 147:3</p> <p>original [3] - 43:13, 119:1, 119:10</p> <p>otherwise [1] - 20:11</p> <p>ourselves [1] - 70:13</p> <p>out-of-court [1] - 26:22</p> <p>outfit [1] - 136:16</p> <p>outfitted [1] - 8:14</p> <p>outside [2] - 8:3, 38:10</p> <p>outstanding [1] - 61:1</p> <p>overall [2] - 109:11, 109:24</p> <p>overarching [1] - 68:4</p> <p>overcome [2] - 82:23, 86:24</p> <p>overcoming [1] - 87:11</p> <p>overlearned [2] - 163:18, 163:20</p> <p>overrule [1] - 92:2</p> <p>overruled [3] - 30:15, 92:20, 110:23</p> <p>oversight [4] - 8:21, 22:24, 138:6, 138:8</p> <p>owe [1] - 17:19</p> <p>own [12] - 5:9, 6:12, 7:15, 8:10, 23:14, 26:17, 30:11, 38:11, 40:25, 61:16, 97:9, 103:14</p> <p>owned [9] - 5:12, 5:16, 8:6, 8:7, 38:4, 38:6, 39:20</p> <p>ownership [1] - 6:8</p> <p>owns [2] - 5:2, 5:6</p> <p style="text-align: center;">P</p> <p>p.m [7] - 1:5, 4:3, 85:8, 166:25</p> <p>package [1] - 45:16</p> <p>page [25] - 32:4, 44:22, 47:7, 57:7, 105:15, 105:16, 128:10, 128:17, 128:23, 131:9, 131:17, 132:5, 133:1, 137:8, 137:10, 137:11, 137:20, 137:23, 137:25, 149:12, 149:14, 151:19, 151:25, 152:17</p> <p>paid [4] - 50:19, 60:17, 60:21, 141:22</p>
--	--	---

Pan [1] - 4:23**Panel** [11] - 59:21, 59:23, 60:16, 114:8, 118:17, 120:6, 136:17, 137:1, 138:13, 139:8, 139:20**panel** [2] - 59:24, 60:18**paper** [4] - 49:12, 49:14, 58:15, 128:4**parcel** [1] - 4:20**parietal** [4] - 70:17, 106:5, 106:13, 125:2**Parietal** [1] - 129:8**Parkinson's** [29] - 58:10, 58:22, 62:2, 62:5, 62:10, 62:13, 62:16, 63:9, 63:12, 63:21, 64:1, 64:3, 64:8, 64:9, 64:15, 64:16, 64:19, 64:21, 64:22, 68:12, 69:13, 96:10, 96:14, 125:23, 129:10, 135:25, 148:3, 148:5, 162:6**part** [28] - 6:6, 6:8, 6:11, 10:8, 17:12, 18:18, 18:23, 21:13, 22:23, 23:16, 37:9, 40:1, 42:8, 42:14, 45:16, 65:6, 81:24, 84:3, 84:17, 100:21, 102:19, 116:25, 120:2, 140:24, 141:2, 154:16, 163:13, 163:14**Part** [1] - 20:24**partially** [2] - 8:6, 8:7**particular** [15] - 8:13, 17:9, 19:13, 20:21, 23:1, 58:23, 60:6, 64:7, 65:10, 71:5, 79:10, 84:5, 90:16, 111:11, 125:11**particularly** [6] - 36:4, 39:15, 62:17, 79:9, 153:12, 154:10**parts** [1] - 72:14**party** [1] - 30:13**pass** [1] - 28:12**passed** [2] - 30:2, 32:20**passes** [1] - 7:19**passing** [1] - 35:11**past** [2] - 87:5, 161:13**patents** [3] - 58:25, 59:1, 59:3**pathologies** [1] - 107:4**pathology** [21] - 62:18, 65:5, 65:6, 79:7, 79:15, 80:1, 80:17, 80:24, 81:11, 81:18, 84:15, 84:20, 87:21, 107:2, 107:3, 108:13, 121:3, 162:16, 163:12**patient** [16] - 58:3, 67:24, 75:8, 76:16, 77:2, 77:3, 109:6, 110:10, 123:20, 124:3, 126:6, 126:7, 132:2, 155:11**patient's** [3] - 73:12, 75:4, 123:16**patients** [37] - 57:13, 57:25, 58:6, 67:16, 67:18, 69:1, 69:17, 72:5, 73:3, 76:24, 88:1, 88:4, 88:7, 88:25, 89:11, 89:14, 95:6, 103:21, 106:21, 106:23, 123:23, 124:6, 124:8, 125:17, 125:20, 125:23, 126:11, 129:17, 129:20, 129:23, 129:25, 130:18, 132:6, 132:9, 146:15, 149:5, 159:14**patients'** [2] - 99:20, 129:14**pattern** [1] - 125:4**pay** [5] - 6:3, 6:17, 7:11, 26:2, 44:20**paying** [4] - 5:24, 45:24, 46:6, 46:13**payment** [1] - 46:2**PD** [4] - 126:2, 126:7, 134:18, 148:9**PD-MCI** [4] - 126:2, 126:7, 134:18, 148:9**PDD** [8] - 121:11, 125:25, 126:6, 129:22, 134:18, 148:12, 148:15, 148:17**peer** [14] - 58:14, 58:18, 59:25, 60:3, 138:5, 138:8, 138:16, 138:17, 138:25, 139:3, 139:4, 140:2, 160:9, 160:11**peer-review** [2] - 60:3, 160:9**peer-reviewed** [5] - 58:14, 58:18, 59:25, 138:25, 139:3**peers** [1] - 139:1**people** [28] - 14:18, 15:5, 17:1, 54:12, 58:9, 66:13, 84:2, 95:22, 97:13, 99:21, 99:25, 100:5, 101:19, 108:6, 110:2, 110:11, 124:7, 136:25, 139:3, 140:24, 141:7, 146:15, 146:17, 147:2, 147:7, 153:8, 154:25, 159:5**people's** [1] - 156:8**per** [3] - 5:24, 6:4, 6:18**per-usage** [1] - 5:24**per-use** [2] - 6:4, 6:18**percent** [4] - 63:17, 80:23, 95:11, 152:14**percentages** [1] - 111:22**percentile** [7] - 105:25, 109:11, 109:13, 109:18, 112:22, 154:1, 154:25**percentiles** [1] - 110:7**perfectly** [1] - 40:9**perform** [2] - 146:12, 146:20**performance** [5] - 67:1, 88:21, 94:13, 155:3, 158:4**performed** [2] - 66:25, 72:24**performing** [1] - 163:5**perhaps** [4] - 92:12, 97:15, 155:3, 160:10**period** [13] - 12:13, 12:16, 25:16, 30:12, 51:22, 71:11, 71:16, 71:21, 81:8, 86:12, 86:17, 101:6, 103:22**permanent** [1] - 87:14**permission** [8] - 48:11, 48:14, 49:8, 49:17, 50:2, 50:4, 50:6, 51:5**permit** [2] - 15:13, 15:14**person** [17] - 14:13, 29:13, 31:3, 32:20, 41:13, 41:20, 43:9, 51:7, 73:11, 132:16, 146:9, 146:12, 154:19, 155:23, 156:18, 163:8**person's** [1] - 117:19**person-to-person** [1] - 73:11**personal** [2] - 14:19, 119:8**personally** [2] - 32:7, 32:13**PET** [78] - 70:4, 70:5, 70:15, 71:8, 71:14, 74:20, 74:21, 75:1, 76:6, 76:10, 77:3, 78:6, 78:21, 79:5, 79:8, 79:11, 79:13, 80:9, 80:12, 80:19, 81:20, 106:7, 106:9, 113:23, 114:5, 114:9, 114:22, 114:23, 114:25, 115:1, 115:23, 116:1, 116:7, 116:10, 116:11, 116:13, 116:16, 116:18, 117:2, 117:3, 117:6, 117:9, 117:11, 117:12, 117:17, 118:5, 118:10, 118:13, 118:14, 118:18,

118:25, 119:12, 119:21, 120:9, 120:15, 120:16, 120:17, 120:20, 121:1, 121:10, 121:12, 121:14, 121:15, 123:16, 123:19, 124:1, 126:13, 126:15, 126:18, 134:1, 134:22, 140:20, 161:24, 162:9, 162:17, 162:18, 162:19

PETs [12] - 71:10, 71:17, 74:22, 75:1, 120:18, 121:16, 122:3, 122:9, 123:12, 123:14, 123:23, 129:14**PGP** [2] - 14:10, 15:23**Phone** [1] - 16:18**phone** [12] - 29:13, 29:17, 35:1, 35:6, 35:11, 35:23, 36:9, 36:17, 36:21, 77:25, 78:1, 85:3**phosphates** [1] - 80:2**phrase** [2] - 17:13, 41:12**physical** [1] - 63:5**physician** [1] - 67:21**physicians** [3] - 149:15, 149:22, 149:25**physics** [1] - 47:22**pickpocket** [1] - 36:7**picture** [1] - 99:12**pictures** [2] - 76:1, 129:22**piece** [3] - 16:1, 74:17, 106:16**pieces** [2] - 10:22, 75:7**place** [3] - 9:22, 26:10, 36:19**plaintiffs** [1] - 69:7**plan** [2] - 37:14, 85:5**planning** [1] - 25:10**plaque** [5] - 79:20, 80:14, 80:17, 80:18, 81:16**plaques** [10] - 65:4, 79:1, 79:9, 79:12, 79:21, 81:14, 87:22, 106:20, 106:24, 113:15**play** [1] - 162:25**players** [1] - 163:3**playing** [1] - 163:9**pleasure** [1] - 165:13**plenty** [3] - 81:8, 98:17, 123:25**plus** [2] - 9:2, 51:22**point** [15] - 5:23, 8:18, 8:22, 11:17, 16:11, 37:21, 40:4, 51:8, 81:16, 97:21, 97:25, 133:2, 134:3, 151:15, 161:5**Point** [4] - 33:23, 34:3**poor** [6] - 67:1, 87:8, 88:21, 100:16, 153:15, 153:20**population** [3] - 75:6, 75:14, 86:20**portfolio** [1] - 51:8**portion** [2] - 52:8, 52:10**portions** [1] - 84:10**position** [6] - 21:8, 21:25, 22:2, 22:14, 47:4, 89:6**positions** [4] - 56:14, 56:25, 57:8, 57:11**positive** [15] - 9:13, 80:13, 80:16, 81:2, 81:5, 81:17, 113:10, 113:13, 121:3, 121:6, 121:12, 121:13, 121:14, 162:19**possibility** [6] - 69:6, 83:23, 87:25, 88:18, 101:21, 118:13**possible** [7] - 42:10, 121:6, 146:11,

<p>152:8, 161:9, 162:24, 166:13 possibly [1] - 85:5 posterior [1] - 163:14 Posterior [1] - 129:8 posttraumatic [2] - 22:8, 22:10 postural [1] - 63:14 potential [6] - 44:5, 52:18, 52:23, 58:23, 88:16, 162:14 potentially [1] - 68:21 power [9] - 31:3, 41:11, 41:17, 41:20, 41:21, 42:4, 43:8, 43:9, 43:20 practical [1] - 32:19 practice [6] - 36:19, 67:22, 70:11, 87:24, 88:10, 155:18 practitioner [1] - 150:1 preadmitted [1] - 57:2 precedes [1] - 20:8 precise [2] - 74:12, 74:13 precision [1] - 73:5 preclinical [1] - 81:8 prepare [2] - 66:16, 99:3 prepared [4] - 43:1, 154:17, 154:19, 155:1 preparing [1] - 142:11 presence [8] - 64:22, 64:24, 79:1, 79:17, 80:14, 84:7, 84:20, 114:13 present [3] - 101:5, 114:17, 151:8 presentation [5] - 79:3, 83:22, 100:1, 100:4, 101:20 presentations [1] - 99:21 preserved [1] - 84:1 pressure [1] - 45:2 pretend [1] - 13:15 pretext [1] - 51:4 pretty [10] - 15:23, 107:16, 141:11, 141:14, 146:15, 146:18, 150:16, 154:7, 160:12, 160:15 previous [1] - 43:14 previously [1] - 21:9 primarily [1] - 67:13 primary [1] - 101:14 print [2] - 98:7, 98:13 Prion [1] - 58:10 prison [3] - 89:8, 89:12, 89:14 privacy [2] - 14:22, 15:23 private [1] - 14:13 problem [4] - 32:19, 35:7, 60:6, 98:17 problems [6] - 81:3, 95:10, 107:13, 149:15, 149:24, 159:12 proceed [1] - 4:7 Proceedings [1] - 85:8 proceedings [2] - 2:15, 167:4 process [8] - 60:4, 71:13, 84:15, 86:18, 116:25, 120:3, 160:12, 163:7 processes [7] - 76:20, 76:22, 77:2, 78:13, 86:13, 87:3, 87:15 processing [1] - 113:3 produced [1] - 2:16 product [2] - 16:8, 16:24</p>	<p>products [2] - 14:9, 16:15 profession [1] - 138:18 profits [1] - 47:3 prognosis [1] - 121:9 program [2] - 21:22, 57:18 progressed [3] - 122:10, 122:11, 122:12 progresses [1] - 65:11 progression [6] - 71:7, 71:9, 72:6, 72:10, 109:4, 122:15 progressive [2] - 64:9, 76:15 projector [1] - 150:12 promise [1] - 93:8 pronounce [1] - 78:4 properly [5] - 17:15, 27:17, 67:17, 71:1, 78:25 properties [15] - 4:15, 4:19, 5:3, 5:10, 5:15, 6:4, 6:5, 6:7, 6:9, 6:13, 7:15, 7:18, 8:4, 12:7, 12:9 property [3] - 4:24, 6:18, 7:6 Property [1] - 5:16 protect [1] - 53:9 protective [1] - 87:18 protector [6] - 30:6, 30:25, 32:19, 32:20, 34:1, 49:19 protein [3] - 79:23, 80:1, 80:3 protocol [1] - 55:15 prove [1] - 26:22 proven [1] - 152:5 provide [2] - 62:22, 89:23 Provide [1] - 32:8 provided [2] - 11:21, 48:6 prudent [1] - 43:15 psychiatric [1] - 65:22 psychiatrist [2] - 60:15, 139:9 psychiatrists [1] - 139:13 psychologist [1] - 139:19 publication [1] - 129:5 publications [1] - 58:14 publish [1] - 58:23 published [5] - 58:12, 58:18, 58:21, 80:21, 139:4 publishes [1] - 123:22 pull [2] - 137:19, 149:12 purpose [3] - 20:20, 21:4, 23:9 purposely [1] - 157:9 purposes [8] - 7:25, 16:8, 20:17, 22:16, 23:13, 23:19, 29:20, 89:22 pursuant [1] - 12:15 purview [2] - 38:10, 38:25 push [3] - 84:24, 85:2, 166:16 pushing [1] - 165:22 put [14] - 19:19, 29:3, 49:3, 49:23, 57:2, 74:18, 97:8, 103:12, 103:13, 104:22, 141:12, 142:5, 151:5 puts [1] - 105:24 putting [2] - 144:2, 165:11</p>	<p style="text-align: center;">Q</p> <p>qualified [1] - 89:23 qualitative [14] - 72:16, 72:20, 72:23, 74:3, 96:24, 97:5, 99:15, 103:14, 106:4, 108:16, 111:8, 123:5, 123:7, 126:4 quantitation [2] - 73:1, 111:20 quantitative [17] - 73:4, 73:6, 74:5, 96:24, 103:14, 104:10, 105:24, 108:15, 110:15, 110:21, 111:9, 111:12, 111:13, 112:9, 112:12, 112:17, 123:3 Queen [5] - 4:20, 5:12, 5:13, 5:25, 6:18 questioning [1] - 4:17 questions [23] - 4:14, 8:20, 10:23, 11:1, 13:24, 14:9, 15:23, 15:24, 16:17, 19:9, 19:10, 19:22, 40:7, 54:14, 55:16, 77:8, 90:7, 93:8, 115:15, 146:25, 161:7, 163:24, 165:4 quick [3] - 73:16, 108:13, 164:2 quite [13] - 33:24, 60:19, 63:23, 68:1, 81:7, 84:1, 86:11, 101:7, 103:23, 107:7, 138:18, 139:19, 164:9 quote [16] - 24:13, 25:8, 26:15, 27:13, 27:17, 27:19, 28:1, 93:20, 102:4, 102:5, 102:14, 139:4, 151:25, 152:18, 155:8 quoting [1] - 113:14</p> <p style="text-align: center;">R</p> <p>radiological [1] - 99:22 radiologist [5] - 72:17, 72:21, 76:4, 117:19, 140:15 raise [1] - 118:13 Ranch [1] - 4:23 range [1] - 130:7 rarely [1] - 155:25 rate [5] - 75:8, 86:15, 95:6, 95:9, 95:10 re [2] - 6:24, 163:25 re-assess [1] - 6:24 reach [1] - 61:24 reached [2] - 12:19, 69:14 reaching [1] - 55:8 read [6] - 19:23, 42:15, 80:13, 129:2, 150:18, 162:2 reading [3] - 24:15, 75:16, 113:14 ready [1] - 125:8 real [1] - 15:19 really [18] - 14:18, 38:22, 64:3, 65:10, 66:12, 75:8, 77:14, 91:19, 109:1, 111:21, 113:23, 138:23, 141:1, 153:21, 158:8, 160:16, 163:16, 166:6 reason [8] - 23:1, 33:19, 33:22, 76:18, 98:16, 101:14, 111:18, 127:7 reasonable [2] - 24:13, 115:10 reasonably [1] - 132:15 reasons [3] - 23:10, 88:7, 111:12 recalled [2] - 84:7, 150:24</p>
---	---	--

<p>received [3] - 28:4, 149:15, 164:22</p> <p>recent [2] - 75:16, 86:4</p> <p>recently [1] - 51:23</p> <p>receptors [1] - 96:13</p> <p>Recessed [1] - 166:25</p> <p>recessed [1] - 85:8</p> <p>recognize [1] - 147:5</p> <p>recognizes [1] - 105:14</p> <p>recollection [3] - 42:1, 46:8, 153:11</p> <p>recommendation [1] - 9:17</p> <p>recommended [1] - 116:6</p> <p>record [13] - 56:1, 85:12, 102:11, 115:8, 128:3, 128:14, 128:25, 129:3, 131:15, 150:14, 159:21, 162:3, 167:4</p> <p>recorded [5] - 2:15, 143:8, 143:13, 143:16, 144:12</p> <p>records [10] - 11:4, 13:12, 51:2, 61:11, 61:15, 61:19, 142:17, 142:19, 144:3, 144:10</p> <p>RECROSS [1] - 53:20</p> <p>ReCross [1] - 3:4</p> <p>recross [1] - 161:11</p> <p>RECROSS-EXAMINATION [1] - 53:20</p> <p>recruit [3] - 20:25, 21:8, 21:14</p> <p>red [3] - 15:14, 15:15, 125:3</p> <p>ReDirect [2] - 3:3, 3:7</p> <p>redirect [1] - 28:13</p> <p>REDIRECT [3] - 28:15, 161:21, 164:18</p> <p>reduced [1] - 70:21</p> <p>redundancy [1] - 84:19</p> <p>redundant [2] - 84:6, 84:10</p> <p>Reed [2] - 12:3, 12:5</p> <p>refer [1] - 104:3</p> <p>reference [1] - 150:24</p> <p>referenced [3] - 18:11, 21:9, 39:22</p> <p>referred [1] - 139:20</p> <p>referring [2] - 66:22, 75:24</p> <p>refers [1] - 32:23</p> <p>reflected [1] - 72:16</p> <p>reflecting [1] - 78:23</p> <p>reframe [1] - 115:19</p> <p>refresh [2] - 12:8, 46:8</p> <p>refused [1] - 158:24</p> <p>regarded [1] - 20:14</p> <p>Regency [4] - 5:2, 5:6, 5:9, 45:22</p> <p>regional [1] - 71:5</p> <p>regions [2] - 70:18, 74:10</p> <p>regular [2] - 7:2, 10:25</p> <p>regulated [1] - 9:14</p> <p>regulation [2] - 9:7, 9:21</p> <p>regulations [1] - 9:11</p> <p>regulators [1] - 8:21</p> <p>reimburse [3] - 39:14, 39:25, 40:22</p> <p>related [10] - 8:20, 10:5, 26:11, 53:12, 57:17, 62:2, 65:5, 79:25, 85:25, 87:21</p> <p>relation [5] - 12:5, 45:7, 47:14, 49:19, 62:16</p> <p>relationship [1] - 47:24</p> <p>relatively [4] - 71:11, 71:16, 71:21,</p>	<p>103:22</p> <p>releases [1] - 87:16</p> <p>relevance [2] - 79:10, 91:13</p> <p>relevant [3] - 62:22, 90:18, 121:10</p> <p>reliability [3] - 74:16, 103:18, 158:24</p> <p>reliable [1] - 74:15</p> <p>relied [1] - 97:4</p> <p>rely [1] - 96:13</p> <p>relying [1] - 155:8</p> <p>remember [17] - 11:1, 14:1, 46:12, 47:5, 90:21, 111:4, 111:14, 119:9, 120:5, 130:3, 140:24, 141:8, 141:9, 148:16, 153:16, 153:20, 160:2</p> <p>remembers [1] - 148:2</p> <p>remind [1] - 130:7</p> <p>rent [10] - 5:24, 6:3, 6:17, 6:23, 7:6, 7:11, 45:25, 46:2, 46:6, 46:13</p> <p>rented [1] - 46:19</p> <p>reoccurring [2] - 86:10, 87:4</p> <p>repeat [1] - 131:15</p> <p>repeated [2] - 71:17, 100:21</p> <p>repetitive [1] - 132:14</p> <p>rephrase [1] - 121:1</p> <p>replace [2] - 31:3, 32:13</p> <p>replacement [1] - 119:5</p> <p>report [35] - 66:18, 72:18, 74:6, 74:8, 101:22, 102:3, 102:10, 102:14, 105:2, 105:24, 109:10, 113:16, 115:20, 117:15, 117:19, 117:25, 118:7, 119:2, 119:10, 119:19, 122:14, 127:10, 137:4, 137:7, 138:9, 141:6, 141:12, 141:15, 142:25, 144:13, 149:11, 151:1, 151:18, 160:5, 160:15</p> <p>reported [1] - 148:20</p> <p>REPORTER [1] - 2:11</p> <p>reporter [2] - 129:11, 155:24</p> <p>REPORTER'S [1] - 167:1</p> <p>reporting [1] - 94:8</p> <p>reports [20] - 60:7, 61:13, 70:7, 70:12, 99:6, 104:6, 104:9, 116:6, 118:15, 118:21, 118:23, 119:13, 119:18, 124:16, 137:1, 137:15, 138:13, 141:2, 142:11, 146:14</p> <p>representations [1] - 126:6</p> <p>request [1] - 18:22</p> <p>requested [2] - 62:22, 118:2</p> <p>requesting [1] - 49:2</p> <p>requests [1] - 18:19</p> <p>required [4] - 39:4, 46:16, 114:14, 155:19</p> <p>requirement [1] - 6:21</p> <p>requirements [2] - 9:8, 9:21</p> <p>requiring [1] - 7:11</p> <p>research [11] - 8:14, 8:15, 21:18, 22:2, 22:9, 56:7, 56:16, 56:24, 57:17, 58:13, 109:5</p> <p>researcher [1] - 57:16</p> <p>reserve [12] - 86:23, 87:2, 87:7, 87:8, 100:4, 100:8, 100:13, 100:15, 100:21, 101:15, 101:18, 126:22</p>	<p>reserves [1] - 99:20</p> <p>residence [1] - 83:3</p> <p>residents [1] - 57:19</p> <p>resign [2] - 32:10, 32:11</p> <p>resigns [1] - 32:6</p> <p>respect [18] - 12:7, 40:12, 41:22, 69:19, 69:22, 70:15, 72:7, 73:5, 75:1, 77:10, 78:17, 82:25, 87:6, 88:17, 91:9, 163:8, 163:17, 166:4</p> <p>respectfully [1] - 30:15</p> <p>respective [1] - 153:9</p> <p>respects [1] - 63:20</p> <p>respond [3] - 18:19, 18:23, 41:2</p> <p>response [5] - 45:13, 76:23, 91:15, 115:6, 137:16</p> <p>responsibilities [2] - 57:12, 57:20</p> <p>responsibility [1] - 37:21</p> <p>restructure [1] - 9:17</p> <p>result [5] - 18:20, 18:24, 24:24, 69:8, 80:12</p> <p>results [1] - 79:11</p> <p>resume [1] - 57:4</p> <p>retained [5] - 160:3, 160:14, 163:7, 163:13, 163:16</p> <p>returns [1] - 46:24</p> <p>reveal [1] - 121:10</p> <p>revenue [1] - 5:20</p> <p>review [18] - 60:3, 70:13, 71:22, 72:8, 80:19, 83:8, 83:14, 88:13, 88:14, 96:25, 104:6, 138:16, 138:17, 139:5, 140:2, 144:23, 160:9, 160:11</p> <p>reviewed [13] - 58:14, 58:18, 59:25, 61:8, 61:10, 69:24, 70:2, 71:8, 113:5, 138:25, 139:1, 139:3, 141:15</p> <p>reviewers [1] - 139:6</p> <p>reviewing [4] - 61:15, 61:19, 153:2, 157:5</p> <p>Reynolds [7] - 18:6, 37:14, 83:12, 156:20</p> <p>Rice [2] - 47:17, 47:20</p> <p>rid [1] - 43:14</p> <p>rifle [1] - 148:23</p> <p>right-hand [1] - 42:7</p> <p>rigidity [1] - 63:14</p> <p>rise [3] - 4:5, 85:7, 85:9</p> <p>risk [3] - 44:25, 45:8, 69:4</p> <p>RMR [2] - 2:12, 167:8</p> <p>Robert [6] - 29:12, 29:13, 29:17, 39:13, 39:15, 59:18</p> <p>ROBERT [1] - 1:6</p> <p>role [2] - 5:23, 34:6</p> <p>Room [2] - 1:21, 2:12</p> <p>round [4] - 6:4, 6:17, 7:6, 7:11</p> <p>routinely [2] - 72:5, 73:2</p> <p>row [5] - 125:10, 125:15, 125:16, 125:19</p> <p>RPR [1] - 167:8</p> <p>Rufus [1] - 11:13</p> <p>ruled [1] - 69:18</p> <p>ruling [1] - 69:22</p>
---	---	---

<p>run [2] - 16:7, 57:16 ruse [1] - 13:15 rushing [1] - 85:18 Rusk [1] - 2:12 Ryan [3] - 117:15, 117:22, 143:11</p>	<p>132:19, 132:23, 137:19, 149:13, 151:20, 158:6, 159:14 seeing [7] - 29:12, 71:20, 75:25, 122:21, 146:10, 149:23, 149:25 seek [6] - 17:17, 88:5, 135:16, 149:9, 149:16, 151:2 seeks [2] - 59:25, 60:3 seem [1] - 84:8 seemingly [2] - 84:4, 103:13 segmentation [1] - 103:16 send [1] - 39:9 sending [3] - 34:19, 37:14, 42:3 sense [3] - 67:5, 112:19, 123:15 sent [5] - 20:3, 29:9, 41:24, 47:1, 98:8 separate [2] - 7:5, 121:8 September [2] - 24:9, 24:10 series [1] - 37:8 server [2] - 15:3, 48:25 serves [1] - 5:6 service [1] - 5:21 SESSION [1] - 1:10 set [7] - 10:2, 20:4, 23:18, 23:19, 35:2, 38:8, 163:5 setting [14] - 19:3, 25:9, 69:7, 75:12, 89:17, 89:19, 94:22, 95:1, 95:5, 121:3, 121:12, 152:12, 157:6, 157:11 settings [1] - 84:2 several [3] - 8:23, 20:18, 26:9 severe [1] - 145:10 severity [2] - 126:14, 160:21 seward [1] - 139:24 shaken [1] - 14:1 shared [1] - 166:9 shareholder [1] - 30:5 shepherd [1] - 140:13 Shepherd [1] - 141:5 Sherry [1] - 11:25 shift [2] - 14:8, 23:21 shoes [1] - 156:19 short [11] - 57:1, 65:10, 67:13, 71:11, 71:16, 71:21, 83:18, 86:12, 86:16, 93:8, 103:22 short-circuit [1] - 57:1 short-term [2] - 65:10, 67:13 shorter [1] - 71:19 show [15] - 31:11, 42:2, 44:11, 47:3, 48:17, 97:21, 99:12, 105:13, 107:25, 124:14, 125:6, 133:8, 134:12, 135:22, 161:23 showed [2] - 15:2, 70:17 showing [10] - 19:18, 78:7, 78:17, 78:21, 98:5, 99:5, 125:2, 125:11, 135:10, 150:14 shown [1] - 19:13 shows [5] - 79:11, 96:12, 99:8, 102:15, 162:11 shrinkage [7] - 72:11, 72:13, 76:2, 78:7, 102:16, 102:19, 103:2 sic [1] - 38:11</p>	<p>side [2] - 42:7, 76:3 sides [2] - 35:17, 143:24 sign [1] - 39:7 Signal [1] - 16:22 signature [2] - 37:15, 39:5 signed [2] - 15:16, 32:8 significance [7] - 67:8, 72:2, 72:12, 80:15, 80:20, 86:9, 121:14 significant [11] - 68:1, 75:21, 79:17, 80:25, 84:7, 86:11, 102:15, 102:18, 102:23, 108:12, 146:20 Silent [1] - 16:18 similar [2] - 8:4, 99:25 similar-looking [1] - 99:25 Simon [1] - 11:22 simple [2] - 93:8, 99:24 situation [2] - 68:23, 156:8 six [1] - 58:3 size [1] - 109:24 Skadden [1] - 11:11 skip [1] - 45:6 slice [3] - 111:18, 111:25, 112:3 slide [3] - 108:1, 133:9, 134:21 slides [1] - 124:15 slightly [2] - 8:6, 122:10 small [2] - 47:3, 150:16 smell [1] - 150:24 Smith [7] - 1:18, 20:11, 29:18, 39:13, 40:23, 51:4, 51:12 SMITH [1] - 166:22 Smith's [4] - 10:24, 11:3, 20:8, 51:1 Snapchat [1] - 16:19 Social [1] - 89:3 software [2] - 16:1, 112:6 someone [9] - 18:5, 22:8, 30:2, 33:24, 34:6, 73:21, 107:6, 164:5, 164:12 sometimes [5] - 103:10, 127:1, 155:23, 156:1, 156:7 somewhat [3] - 79:24, 109:6, 145:11 son [2] - 47:20, 156:5 sorry [33] - 7:1, 30:8, 30:21, 40:1, 42:6, 49:22, 51:25, 53:23, 92:10, 105:18, 110:5, 110:8, 115:19, 120:18, 121:5, 122:23, 128:13, 128:25, 129:11, 130:15, 131:14, 131:17, 131:21, 134:9, 138:9, 143:20, 148:8, 149:11, 150:11, 151:4, 155:16, 159:25, 161:16 sort [16] - 9:6, 16:7, 21:12, 23:21, 41:13, 68:4, 68:9, 69:14, 75:5, 85:25, 87:12, 99:14, 108:17, 146:5, 147:2, 159:23 sorts [1] - 88:7 sought [3] - 10:4, 11:7, 149:20 sound [4] - 61:4, 82:20, 102:16, 119:19 sounds [4] - 102:17, 147:22, 153:18, 153:21 source [1] - 155:10 sources [8] - 137:8, 137:11, 137:14, 137:21, 138:2, 155:18, 157:5, 161:1 SOUTHERN [1] - 1:1</p>
S		
<p>safe [4] - 39:14, 39:25, 40:22, 54:16 safeguarding [1] - 37:22 sample [1] - 130:10 samples [2] - 124:11, 127:1 sat [2] - 154:20, 156:22 Saturday [3] - 165:24, 166:7, 166:10 save [1] - 104:3 saw [4] - 15:12, 77:11, 83:15, 106:5 scale [1] - 108:18 scan [33] - 64:6, 64:7, 72:9, 72:16, 74:16, 75:15, 75:16, 76:1, 77:14, 77:15, 77:16, 77:17, 77:18, 79:20, 80:10, 80:12, 80:16, 80:18, 80:19, 81:20, 110:11, 114:15, 121:3, 121:7, 121:13, 123:9, 123:10, 161:24 Scan [4] - 81:1, 81:2, 81:5, 113:14 scans [14] - 70:7, 70:13, 70:15, 71:8, 71:22, 71:25, 72:2, 72:4, 72:25, 73:13, 75:3, 76:6, 77:14, 122:18 scattered [1] - 121:20 schedule [1] - 55:5 Scholars [1] - 23:10 scholarship [1] - 23:14 school [5] - 49:3, 49:24, 56:9, 56:12, 56:14 scientific [1] - 102:24 scientist [2] - 102:21, 103:4 Score [7] - 127:5, 127:8, 129:20, 129:25, 130:3, 132:9, 132:16 scored [1] - 153:25 Scott [1] - 2:2 screen [12] - 29:4, 42:5, 42:8, 48:9, 104:23, 105:3, 105:5, 105:11, 105:20, 109:8, 128:21, 131:22 search [10] - 12:15, 13:4, 13:8, 14:1, 14:6, 24:8, 24:12, 24:16, 24:19, 151:14 searched [3] - 12:14, 12:18, 13:22 seated [2] - 4:6, 85:10 second [4] - 102:7, 137:17, 146:25, 159:20 secondary [4] - 88:4, 88:5, 89:1, 89:2 section [1] - 153:12 secure [1] - 14:24 Security [1] - 89:3 security [2] - 36:14, 166:2 see [37] - 14:4, 19:21, 19:25, 20:20, 35:18, 37:9, 39:7, 42:5, 42:23, 44:23, 46:8, 47:7, 57:13, 70:14, 71:13, 72:5, 78:14, 89:11, 92:3, 97:14, 98:24, 106:20, 107:21, 107:23, 112:14, 113:20, 122:18, 125:3, 131:19,</p>		

space [2] - 79:23, 147:3
spacial [1] - 65:14
Spanish [2] - 38:4, 38:6
speaking [1] - 84:3
speaks [1] - 87:10
special [4] - 41:10, 41:17, 41:21, 42:3
specialist [1] - 148:3
specific [5] - 62:20, 74:21, 74:22, 108:2, 164:11
specifically [5] - 36:15, 100:24, 101:1, 112:5, 118:10
specificity [1] - 80:23
specifics [2] - 62:23, 153:23
speeches [1] - 83:11
spell [1] - 55:25
spent [1] - 142:18
spouse [1] - 156:4
spouses [1] - 158:5
St [2] - 24:25, 26:11
stacks [1] - 126:11
staff [1] - 165:25
stage [3] - 63:22, 66:4, 82:10
stages [4] - 67:4, 68:20, 164:7, 164:10
stamina [1] - 63:5
stand [4] - 55:14, 55:15, 89:16, 166:23
standard [1] - 117:10
standards [1] - 91:12
start [14] - 37:11, 37:13, 62:16, 96:5, 98:4, 107:21, 107:23, 118:17, 124:22, 137:8, 137:20, 159:24, 161:16, 165:20
started [2] - 23:23, 166:15
starting [1] - 150:18
starts [3] - 65:9, 107:12, 145:14
State [1] - 66:24
state [7] - 7:19, 7:24, 17:12, 17:13, 27:7, 55:25, 145:8
statement [4] - 26:18, 123:9, 123:11, 146:8
statements [2] - 17:4, 26:22
STATES [3] - 1:1, 1:3, 1:12
States [7] - 26:5, 27:12, 27:16, 27:25, 28:21, 52:14, 59:2
status [4] - 10:3, 35:16, 163:10
stem [1] - 163:14
stemmed [2] - 18:1, 18:3
stems [1] - 18:11
stenography [1] - 2:15
step [2] - 55:10, 121:17
Stephen [1] - 11:7
stepped [3] - 156:18, 156:20, 157:3
steps [1] - 163:8
Steps [2] - 38:4, 38:6
stick [1] - 74:24
sticker [2] - 98:10, 98:13
stickers [3] - 98:8, 98:17, 98:18
still [14] - 26:7, 26:8, 40:9, 42:7, 42:14, 52:20, 57:8, 78:25, 84:19, 137:4, 147:12, 147:17, 148:20, 165:24
stimulation [2] - 21:23

stock [2] - 97:9, 103:13
stop [4] - 55:11, 67:22, 71:1, 78:10
stopped [2] - 46:6, 46:13
storage [1] - 84:18
stored [3] - 84:6, 84:10, 84:14
story [2] - 162:21, 162:25
straw [1] - 41:3
streamline [1] - 85:14
Street [2] - 1:21, 2:7
stress [3] - 22:8, 22:10, 87:11
strike [7] - 52:8, 52:9, 52:11, 64:12, 96:17, 97:18, 110:9
striking [1] - 71:16
strong [2] - 123:9, 123:11
stronger [1] - 9:10
structural [2] - 70:3, 75:2
structure [5] - 7:25, 8:4, 19:6, 40:9, 74:25
structures [1] - 40:12
Stuart [3] - 48:6, 150:4, 151:6
students [1] - 57:19
studied [1] - 47:23
studies [8] - 58:19, 61:12, 64:5, 70:4, 80:22, 113:6, 113:21, 115:13
study [11] - 47:22, 70:5, 81:17, 128:23, 129:1, 129:3, 130:10, 130:20, 130:25, 131:21, 135:13
study's [1] - 131:3
studying [1] - 111:24
stuff [4] - 32:24, 33:1, 95:16, 121:24
sub [1] - 121:23
subject [3] - 53:13, 103:17, 109:4
subjective [2] - 145:11, 158:11
submit [1] - 33:13
submitted [2] - 24:21, 160:6
submitting [2] - 33:7, 33:16
subsidiaries [1] - 38:21
substantial [3] - 44:19, 79:15, 142:8
successor [3] - 32:7, 32:13, 33:21
suddenly [1] - 33:24
suffering [2] - 82:1, 83:23
sufficiently [1] - 141:10
sugar [1] - 78:18
suggest [3] - 47:2, 87:5, 122:9
suggestion [2] - 32:7, 32:12
suggestive [1] - 162:4
Suite [1] - 2:3
super [1] - 113:13
supervise [1] - 58:4
support [7] - 20:21, 20:25, 21:7, 21:17, 21:18, 22:13, 145:20
supported [2] - 122:25, 123:2
surgeon [2] - 162:22, 163:5
surgeons [1] - 146:19
surgery [4] - 146:20, 162:22, 163:10, 164:6
Surgical [2] - 119:3, 119:6
surprise [7] - 95:3, 95:8, 95:12, 153:24, 156:15, 156:25, 157:4

surprised [1] - 60:20
surprisingly [1] - 163:7
susceptibility [1] - 101:16
suspecting [1] - 24:14
suspicion [1] - 88:16
Sutherland [1] - 12:10
swear [1] - 55:12
switch [2] - 8:18, 31:12
Switzerland [3] - 52:24, 52:25, 53:6
sworn [2] - 55:13, 55:20
symptom [1] - 63:25
symptomatology [1] - 63:24
symptoms [10] - 62:16, 63:14, 63:15, 63:19, 63:21, 63:22, 64:23, 65:7, 68:6, 155:24
syndrome [2] - 22:8, 22:10
system [1] - 87:20
systemic [2] - 87:16, 87:23

T

table [2] - 127:1, 129:13
tables [1] - 127:5
tabs [1] - 104:16
TAMINE [1] - 3:2
Tamine [10] - 4:11, 9:24, 24:14, 27:7, 28:17, 53:22, 54:15, 54:16, 151:12
tangle [4] - 65:4, 79:7, 79:15, 80:7
tangles [4] - 79:1, 80:4, 80:5, 87:22
targeted [2] - 45:1, 45:7
tau [29] - 65:5, 79:25, 80:1, 80:3, 81:10, 81:11, 106:20, 106:24, 107:2, 107:10, 107:12, 107:19, 108:10, 108:13, 113:20, 116:16, 116:18, 117:2, 117:6, 117:11, 118:5, 118:13, 118:18, 120:9, 120:15, 120:20, 121:1, 121:6, 121:13
tau-related [2] - 65:5, 79:25
Tax [1] - 1:20
tax [7] - 17:18, 17:19, 25:10, 25:20, 27:9, 46:24, 47:3
taxes [1] - 26:3
taxi [1] - 35:2
teach [1] - 57:18
teaching [1] - 21:25
team [1] - 114:8
technically [1] - 26:24
technique [1] - 103:16
Tel [4] - 1:22, 2:4, 2:8, 2:13
telephone [1] - 32:5
Tello [1] - 12:10
temporal [4] - 70:18, 106:6, 106:13, 125:2
ten [1] - 141:24
tenant [1] - 46:22
tend [1] - 80:3
term [9] - 62:10, 65:10, 67:13, 67:14, 68:4, 102:23, 138:16, 138:18, 147:1
terms [11] - 20:4, 22:22, 23:18, 33:25, 39:2, 68:9, 74:21, 90:19, 145:9,

<p>146:23, 165:3</p> <p>test [5] - 117:22, 117:24, 118:2, 120:4, 120:20</p> <p>testamentary [3] - 41:11, 41:21, 42:4</p> <p>tested [1] - 83:17</p> <p>testified [18] - 16:6, 23:23, 55:20, 65:25, 76:5, 91:10, 92:11, 92:15, 92:24, 93:20, 103:12, 107:6, 118:12, 118:24, 130:16, 146:2, 154:3, 163:17</p> <p>testify [3] - 118:6, 120:14, 144:21</p> <p>testifying [5] - 4:13, 33:16, 91:8, 91:16, 92:13</p> <p>testimony [12] - 25:2, 28:19, 34:5, 34:7, 89:22, 94:16, 96:25, 106:23, 107:16, 141:7, 142:11, 145:1</p> <p>testing [5] - 66:23, 152:1, 152:13, 153:15, 153:20</p> <p>tests [8] - 94:14, 152:6, 152:11, 152:18, 152:23, 153:1, 153:3, 153:25</p> <p>TEXAS [1] - 1:1</p> <p>Texas [3] - 1:4, 2:3, 2:13</p> <p>text [1] - 15:15</p> <p>thank [1] - 42:20</p> <p>Thanksgiving [1] - 166:22</p> <p>THE [126] - 1:1, 1:1, 1:11, 1:17, 2:1, 4:5, 4:6, 26:24, 27:3, 28:13, 29:5, 30:9, 30:15, 30:20, 30:22, 31:24, 34:13, 34:15, 35:14, 37:3, 41:8, 42:17, 42:19, 43:19, 43:25, 44:14, 45:20, 48:20, 50:24, 53:17, 53:19, 54:16, 54:18, 54:19, 54:20, 54:22, 54:23, 54:25, 55:6, 55:10, 55:14, 55:17, 55:18, 59:11, 59:14, 73:16, 73:18, 73:19, 73:22, 74:1, 77:7, 77:10, 77:13, 77:15, 77:17, 77:18, 77:20, 77:21, 78:2, 84:23, 85:2, 85:7, 85:9, 85:10, 85:18, 85:22, 88:24, 89:5, 89:9, 89:10, 89:13, 89:18, 89:20, 90:2, 90:5, 90:8, 91:3, 91:6, 91:15, 91:22, 92:1, 92:17, 92:20, 98:10, 98:14, 98:16, 102:7, 104:20, 104:21, 110:18, 110:23, 111:2, 115:11, 120:25, 121:1, 127:18, 127:19, 130:13, 130:23, 133:5, 134:6, 134:10, 134:24, 135:5, 135:8, 135:19, 136:6, 136:9, 158:21, 161:8, 161:12, 163:25, 164:2, 164:8, 164:14, 164:17, 165:5, 165:7, 165:10, 165:13, 165:15, 165:17, 165:20, 166:12, 166:21, 166:23</p> <p>themselves [4] - 15:16, 70:9, 70:10, 87:20</p> <p>therefore [1] - 117:10</p> <p>thicker [1] - 111:19</p> <p>thickness [2] - 111:18, 111:19</p> <p>thinking [4] - 116:18, 150:25, 164:8, 165:20</p> <p>Thomas [2] - 55:9, 56:2</p> <p>THOMAS [2] - 3:5, 55:19</p> <p>Thorpe [2] - 38:12, 38:24</p> <p>thoughts [2] - 41:3, 41:4</p>	<p>thousand [1] - 58:3</p> <p>thousands [1] - 163:6</p> <p>three [7] - 65:20, 86:6, 86:8, 99:8, 138:8, 141:1, 143:22</p> <p>threw [1] - 44:10</p> <p>timelines [1] - 109:3</p> <p>timing [2] - 19:12, 62:15</p> <p>timings [1] - 83:2</p> <p>Timothy [1] - 140:13</p> <p>title [3] - 129:4, 129:5, 129:7</p> <p>to-do [2] - 31:14, 47:9</p> <p>to-scale [1] - 108:18</p> <p>today [10] - 10:12, 85:12, 85:19, 89:22, 93:1, 100:14, 100:15, 101:7, 113:12, 166:17</p> <p>together [3] - 21:12, 60:6, 93:15</p> <p>Tommy [5] - 156:16, 156:18, 156:22, 157:1, 157:13</p> <p>tomorrow [3] - 165:21, 166:16, 166:24</p> <p>took [4] - 14:21, 27:19, 78:1, 147:14</p> <p>tool [4] - 113:24, 114:1, 117:2, 132:14</p> <p>top [5] - 37:11, 125:9, 125:19, 125:25, 128:10</p> <p>topic [1] - 23:22</p> <p>topics [1] - 58:17</p> <p>total [1] - 39:19</p> <p>totally [1] - 94:4</p> <p>toxic [3] - 79:24, 80:6, 86:1</p> <p>toxins [1] - 87:19</p> <p>track [2] - 144:3, 147:3</p> <p>tracks [1] - 77:3</p> <p>trained [1] - 122:2</p> <p>training [1] - 139:9</p> <p>trajectories [2] - 109:4, 109:5</p> <p>trajectory [1] - 86:14</p> <p>transaction [1] - 39:15</p> <p>transcranial [1] - 21:23</p> <p>Transcript [1] - 2:16</p> <p>transcript [1] - 167:4</p> <p>transcription [1] - 2:16</p> <p>transcripts [1] - 144:16</p> <p>translate [1] - 79:3</p> <p>transporter [1] - 64:6</p> <p>traumatic [1] - 21:1</p> <p>Traurig [1] - 12:1</p> <p>travel [1] - 144:4</p> <p>traveling [2] - 35:5, 36:2</p> <p>travels [1] - 54:17</p> <p>treat [1] - 57:25</p> <p>treating [1] - 148:5</p> <p>treatment [3] - 48:6, 57:15, 149:15</p> <p>treatments [2] - 58:23, 59:4</p> <p>tremor [1] - 63:14</p> <p>trend [1] - 153:20</p> <p>Trevor [8] - 30:3, 30:4, 30:5, 30:25, 32:5, 32:10, 32:11, 32:18</p> <p>trial [3] - 63:5, 89:16, 166:19</p> <p>trigger [2] - 79:25, 80:1</p> <p>triggers [1] - 81:10</p>	<p>true [8] - 8:22, 22:16, 90:17, 90:22, 112:11, 143:7, 166:21</p> <p>trust [20] - 5:5, 6:8, 6:12, 7:25, 8:3, 9:22, 12:4, 12:5, 19:2, 25:10, 30:25, 33:10, 37:23, 41:19, 48:13, 49:12, 49:18, 49:20, 54:11</p> <p>Trust [8] - 24:25, 26:11, 30:6, 31:1, 38:8, 40:8, 41:22</p> <p>trust's [1] - 50:20</p> <p>trustee [13] - 5:6, 5:23, 6:2, 6:6, 31:4, 34:1, 37:24, 38:18, 38:20, 41:14, 41:18, 43:8, 48:13</p> <p>trusts [6] - 7:14, 8:10, 8:21, 10:5, 10:18, 32:19</p> <p>truth [3] - 26:22, 60:7, 157:7</p> <p>truthfully [1] - 93:13</p> <p>try [7] - 78:4, 82:23, 93:7, 93:9, 105:20, 129:2, 161:11</p> <p>trying [4] - 52:8, 52:9, 57:1, 109:1</p> <p>Tuesday [2] - 166:8, 166:9</p> <p>turn [3] - 12:13, 132:25, 161:3</p> <p>turned [3] - 18:24, 19:2, 166:1</p> <p>turns [1] - 165:25</p> <p>twice [1] - 51:20</p> <p>two [22] - 18:4, 28:10, 49:24, 79:16, 80:21, 97:10, 98:1, 99:21, 99:25, 122:3, 131:3, 132:22, 135:2, 135:4, 143:15, 143:21, 144:12, 144:15, 154:17, 154:20, 155:1</p> <p>TX [1] - 2:4</p> <p>type [1] - 72:24</p> <p>types [7] - 57:12, 58:6, 70:1, 97:22, 104:9, 126:24, 147:7</p> <p>typical [4] - 123:15, 123:19, 126:6</p> <p>typically [8] - 58:2, 65:9, 71:17, 73:11, 75:22, 76:14, 107:1, 164:9</p>
U		
<p>U.S [5] - 1:20, 5:10, 5:19, 28:22, 36:2</p> <p>UCHS [1] - 38:11</p> <p>UCSH [3] - 37:25, 38:3, 38:24</p> <p>ultimate [3] - 89:25, 90:4, 91:8</p> <p>ultimately [1] - 80:4</p> <p>unable [2] - 67:16, 147:5</p> <p>unaware [1] - 33:16</p> <p>unbiased [1] - 60:2</p> <p>unclear [1] - 24:23</p> <p>uncomfortable [1] - 35:5</p> <p>uncommon [1] - 15:8</p> <p>under [10] - 8:23, 9:18, 20:10, 33:25, 40:9, 41:18, 43:8, 142:20, 157:1</p> <p>undergoing [1] - 119:5</p> <p>underlying [1] - 58:20</p> <p>undisputed [1] - 110:16</p> <p>unexpectedly [2] - 31:6, 34:6</p> <p>unfortunate [1] - 69:8</p> <p>unfortunately [5] - 64:10, 85:11, 126:12, 149:5, 160:4</p> <p>United [7] - 26:5, 27:12, 27:16, 27:25,</p>		

<p>28:20, 52:14, 59:2 UNITED [3] - 1:1, 1:3, 1:12 universities [1] - 23:2 University [7] - 19:10, 20:3, 22:11, 23:11, 47:18, 47:20, 56:9 university [1] - 22:2 unknown [2] - 108:8, 109:5 unless [1] - 26:25 unlike [2] - 89:1, 123:14 unnecessary [1] - 117:11 unrelated [1] - 30:11 unreliable [5] - 82:14, 110:21, 111:21, 161:4, 164:22 unreported [1] - 26:3 unsealed [1] - 25:16 unusual [3] - 49:10, 87:8, 164:9 up [33] - 13:10, 19:3, 19:24, 25:9, 29:3, 35:2, 35:8, 38:3, 41:3, 57:2, 70:8, 73:24, 74:1, 76:19, 76:21, 77:8, 77:21, 78:21, 82:23, 103:9, 104:23, 116:18, 120:8, 120:12, 124:21, 126:11, 131:12, 131:19, 137:19, 149:12, 161:11, 164:6, 165:11 usage [1] - 5:24 useful [3] - 74:17, 75:3, 78:7 uses [2] - 70:22, 124:3 utilization [1] - 70:21</p>	<p>videos [10] - 83:8, 83:14, 142:24, 143:8, 144:23, 145:3, 145:20, 146:2, 146:6, 146:10 view [9] - 9:10, 9:13, 17:11, 28:24, 43:3, 70:7, 75:3, 106:5, 145:20 viewed [2] - 17:12, 17:14 village [2] - 109:20, 110:2 Virginia [1] - 23:12 visibility [1] - 19:6 vista [1] - 51:8 visual [2] - 65:14, 75:20 voice [1] - 16:19 Voice [1] - 16:20 volume [13] - 72:6, 72:14, 72:15, 73:19, 76:15, 76:16, 76:19, 76:21, 77:2, 77:10, 77:11, 77:13, 105:25 volumetric [9] - 73:1, 73:7, 74:10, 75:2, 75:11, 103:6, 103:22, 106:10, 123:7 VS [1] - 1:4</p>	<p>35:15, 35:16, 35:17, 44:16, 48:21, 55:1, 55:4, 55:13, 85:21, 92:18, 92:19, 104:18, 105:13, 127:16, 165:8 WITNESS [20] - 42:19, 43:19, 54:18, 54:20, 54:23, 55:17, 73:18, 73:22, 77:13, 77:17, 77:20, 89:5, 89:10, 89:18, 104:21, 121:1, 127:19, 130:23, 164:8, 165:13 witness's [1] - 26:17 witnesses [3] - 97:21, 115:12, 166:4 wondering [2] - 119:12, 120:2 Wood [3] - 32:7, 32:13, 33:21 word [2] - 28:3, 152:4 wording [1] - 40:24 words [4] - 91:17, 97:7, 131:3, 151:5 works [2] - 78:17, 166:14 world [1] - 29:19 worldwide [1] - 52:16 worried [5] - 36:7, 36:15, 36:16, 36:18, 58:9 worry [2] - 29:22, 136:11 worse [5] - 64:11, 101:20, 122:4, 130:9, 132:23 worthwhile [1] - 23:19 wrestle [1] - 160:17 write [4] - 34:25, 44:25, 45:11, 149:12 written [1] - 70:7 wrote [7] - 44:7, 44:9, 44:17, 102:4, 102:14, 148:17, 151:1</p>
V	W	Y
<p>valid [2] - 33:10, 40:9 valuation [1] - 51:7 value [2] - 6:23, 73:12 valve [1] - 119:5 Van [1] - 11:11 variability [1] - 73:9 variable [3] - 63:16, 76:15, 76:22 variation [3] - 73:11, 75:13, 126:12 varies [1] - 75:14 variety [2] - 39:12, 58:11 various [7] - 48:10, 51:7, 58:23, 61:11, 61:12, 64:5, 73:10 Varnado [4] - 2:2, 3:3, 3:4, 42:20 VARNADO [25] - 4:8, 4:10, 26:17, 27:1, 27:5, 27:6, 28:12, 30:10, 30:16, 30:19, 30:21, 31:21, 34:14, 35:13, 37:2, 41:7, 43:24, 45:19, 50:23, 53:18, 53:21, 54:1, 54:2, 54:14, 166:6 vary [2] - 77:2, 109:6 vascular [1] - 65:5 ventricular [2] - 72:19, 76:3 version [3] - 16:19, 16:20, 104:24 versus [2] - 9:5, 120:20 Vesey [1] - 2:7 vessel [6] - 8:13, 39:11, 39:14, 39:23, 40:18, 40:19 veterans [2] - 22:10 Vetter [2] - 11:8, 11:9 vice [1] - 56:23 video [4] - 83:19, 83:22, 144:15, 154:14</p>	<p>W-i-s-n-i-e-w-s-k-i [1] - 56:3 wait [3] - 105:9, 131:16 walk [6] - 20:19, 21:3, 70:6, 82:12, 157:24, 159:8 wants [3] - 26:19, 54:10, 54:11 warrant [6] - 12:15, 24:8, 24:12, 24:16, 24:19, 151:14 Washington [1] - 1:22 watch [2] - 142:23, 154:16 watched [3] - 145:19, 146:2, 154:14 ways [3] - 39:14, 39:25, 40:22 wear [1] - 55:16 web [1] - 16:13 week [1] - 119:13 weekend [1] - 27:12 weight [3] - 74:19, 74:23, 76:6 well-taken [1] - 67:23 Welner [4] - 117:20, 139:7, 139:15, 141:2 wet [1] - 32:8 whatnot [1] - 166:5 WhatsApp [2] - 16:21, 16:22 whereas [1] - 71:20 whereby [2] - 87:15, 87:19 white [2] - 128:5, 130:22 Whitlow [2] - 60:11, 122:8 who'd [1] - 30:2 whole [5] - 37:9, 42:5, 45:3, 72:20, 99:12 wife [7] - 61:22, 66:8, 66:18, 94:9, 147:14, 156:1, 157:19 willingly [1] - 7:12 wills [1] - 43:15 WISNIEWSKI [2] - 3:5, 55:19 Wisniewski [8] - 55:9, 56:2, 57:5, 59:8, 77:25, 85:14, 85:24, 87:24 witness [18] - 28:12, 30:11, 30:14,</p>	<p>yacht [2] - 37:5, 39:10 year [15] - 6:4, 6:17, 6:24, 7:6, 7:11, 51:22, 58:3, 71:18, 72:10, 72:16, 86:6, 87:5, 109:21, 110:8 year-and-a-half [1] - 71:18 year-plus-long [1] - 51:22 year-round [4] - 6:4, 6:17, 7:6, 7:11 years [11] - 10:4, 24:3, 49:25, 56:18, 56:21, 81:7, 81:15, 89:10, 107:17, 110:8, 148:6 York [8] - 2:8, 34:23, 56:9, 85:15, 89:7, 93:1, 152:23, 153:25 yourself [2] - 9:24, 28:24 Yudnofsky [3] - 22:20, 150:4, 151:7 Yudnofskys [1] - 20:22 Yudofsky [1] - 48:6</p>
	Z	
		<p>zoom [3] - 42:10, 98:19, 150:15</p>